

May 21, 2014  
Curtis Hall

A regular meeting of the **BOARD OF COMMISSIONERS** was held this evening, President Harvey Portner presiding. Members present were Commissioners Haywood, McKeown, Norris, Rappoport (via telephone), Sharkey, and Simon.

Staff present were Charlyn Battle, Director of Human Resources; Michael Fleming, Public Works Coordinator; Nancy Gibson, Public Information and Complaint Officer; Brian Hinson, Acting Director of Parks and Recreation; Amy Montgomery, Township Engineer; John J. Norris, Chief of Police; Bruce Rangnow, Director of Fiscal Affairs; Henry Sekawungu, Director of Planning and Zoning; and Bryan T. Havir, Township Manager. Also present was Joseph M. Bagley, Esq., Township Solicitor. A Public Attendance List is attached.

1. The meeting commenced at 7:30 p.m. with the Pledge of Allegiance being led by Commissioner McKeown.
2. Each member having received a copy of the Commissioners' Regular Meeting Minutes dated April 16, 2014, upon motion of Mr. Simon, the Minutes were unanimously approved by the Board of Commissioners.
3. Each member having received a copy of the Executive Summary Financial Report of the Manager/Secretary for the month of April, 2014, upon motion of Mr. McKeown, the Report was unanimously approved by the Board of Commissioners.
4. Each member having received a copy of the Accounts Paid Report for the month of April, 2014, upon motion of Mr. McKeown, the Report was unanimously approved by the Board of Commissioners.
5. Mr. Sharkey presented a Certificate and Pin to Officer Andrew Lambrechtse recognizing his 20-years of service with the Cheltenham Township Police Department.
6. Mr. McKeown presented **Resolution No. 7-14** to Bruce Williams honoring his retirement as Principal of the Glenside Elementary School (see attached). Mr. Williams thanked everyone and his colleagues and students at the School District.
7. Mr. Sharkey presented a plaque to the Township on behalf of the Greater Glenside Patriotic Association as thanks for the support of the Township's public safety departments – Police, Fire, EMS, and Emergency Management.
8. Mr. Sharkey presented a Community Service Award to Sean Bradley in recognition of his attainment of the rank of Eagle Scout.
9. Mr. McKeown presented a Community Service Award to Vignesh Murali in recognition of his attainment of the rank of Eagle Scout.

10. Review of the Pension Board Regular Meeting Minutes dated May 2, 2014:

a. Upon motion of Mr. Simon, the Board of Commissioners unanimously authorized the execution of a Consent Form approving the change in the investment structure of the Township's pension plan advisor, the PFM Group, as requested by the PFM Group.

b. Upon motion of Mr. Simon, the Board of Commissioners unanimously received the Pension Board Regular Meeting Minutes dated May 2, 2014.

11. Review of the Parks and Recreation Committee Regular Meeting Minutes dated May 14, 2014:

a. Mr. Simon asked about the status of the irrigation of the athletic fields. Mr. Havir responded that this matter would be on the agenda for the June 14, 2014 meeting of the Committee.

b. Upon motion of Mr. Sharkey, the Board of Commissioners unanimously received the Parks and Recreation Committee Regular Meeting Minutes dated May 14, 2014. No action was required.

12. Review of the Public Works Committee Regular Meeting Minutes dated May 14, 2014:

a. Upon motion of Mr. Sharkey, the Board of Commissioners unanimously approved Sewer Rate Scenario 2 User Fee Structure for implementation in tax year 2015.

b. Upon motion of Mr. Sharkey, the Board of Commissioners unanimously approved a Certificate of Appropriateness for Application L14-118 to the owner of 1329 W. Cheltenham Avenue, Elkins Park, PA for installation of two identical single-sided storefront signs as recommended (informally) by the La Mott Board of Historical and Architectural Review.

c. Upon motion of Mr. Sharkey, the Board of Commissioners unanimously awarded a Professional Services Contract to Kenneth Amey, Land Development Planner, 1122 Old Bethlehem Pike, Lower Gwynedd, Pennsylvania for review of the proposed draft M4 District Zoning Ordinance to the Cheltenham Township Zoning Code.

d. Upon motion of Mr. Sharkey, the Board of Commissioners unanimously awarded a contract for Furnishing Rates for Concrete Curb and Sidewalk Replacement Equipment to Ditri Construction, Inc., 1330 Vista Street, Philadelphia, PA 19111 for:

<b>CURB</b> 0 to 50 LF x 450 LF Over 50 LF x 150 LF	<b>SIDEWALK</b> 0 to 80 SF 1,800 SF 4" SW 300 SF 6" DW	<b>SIDEWALK</b> Over 80 SF 200 SF 4" SW 100 SF 6" DW	<b>DETECTABLE</b> <b>WARNING</b> <b>SURFACE</b> 49 +/-	<b>TOTAL</b> <b>CONTRACT</b>
\$45.00 = \$20,250.00 \$35.00 = \$ 5,250.00	\$10.00 = \$18,000.00 \$11.00 = \$ 3,300.00	\$10.00 = \$2,000.00 \$11.00 = \$1,100.00	\$375.00 = \$18,375.00	\$68,275.00

e. Upon motion of Mr. Sharkey, the Board of Commissioners unanimously awarded a Consortium contract for unit prices for Furnishing Biodegradable Paper Leaf and Grass Collection Bags to Dano Enterprises, Inc., 180 Harvard Avenue, Stamford, Ct. for:

- Item No. 1 - Approx. 305,500 Thirty (30) Gal. Bags @\$0.332/Bag
- Item No. 2 - Approx. 186,000 Forty (40) Gal. Bags @\$0.497/Bag
- Item No. 3 - Additional price for 30 Gal. Bags @ NC
- Item No. 4 - Additional price for 40 Gal. Bags @ NC
- Item No. 5 - Print lettering on 30 Gal. Bags @ NC\*
- Item No. 6 - Print lettering on 40 Gal. Bags @ NC\*
- Item No. 7 - Peel and Seal Adhesive Strips, 2/Bag @\$0.0019/Bag

f. Upon motion of Mr. Sharkey, the Board of Commissioners unanimously approved five (5) change orders in the amount of \$5,957.75 for additional expenses for the Point Repair Project to ABC Construction Company, Inc.

g. Upon motion of Mr. Sharkey, the Board of Commissioners unanimously awarded a contract to DEVO & Associates, LLC, 1252 Haddonfield-Berlin Road, Unit 2, Voorhees, NJ 08043, for three Multi Space Parking Pay Stations with credit card capability, for Alternate No. 1 and Add Alternate No. 4 for extended maintenance in the amount of \$35,232.00, being the lowest responsible bidder meeting Township specifications and being within budgetary limitations.

h. Discussion ensued about scheduling a Public Hearing to consider the adoption of an Ordinance pertaining to a zoning change of the former Dominican Retreat House property and the hiring of land planning consultant Kenneth Amey to provide review services. Mr. Sharkey commended Mr. Amey's previous work for the Township. Ms. Rappoport asked about a cap to his fee. Mr. Havir recommended that Mr. Amey's fee be capped at \$1,000 and that Mr. Amey be asked to advise the Township when the amount of his work is reaching that amount. It was Mr. Haywood's opinion that Mr. Amey should not be engaged until a Public Hearing on the Ordinance is scheduled.

The matter was tabled for further discussion under "New Business".

i. Upon motion of Mr. Sharkey, the Board of Commissioners unanimously approved the execution of a Stipulated Settlement with Matrix Development Corporation relating to the property known as 1100 Ashbourne Road, Cheltenham (see attached).

Mr. Bagley noted the lack of maintenance of the property's grounds. A representative of Matrix stated that the overgrown grass would be cut.

j. Upon motion of Mr. Sharkey, the Board of Commissioners unanimously accepted the Public Works Committee Regular Meeting Minutes dated May 14, 2014.

13. Upon motion of Mr. Sharkey, the Board of Commissioners unanimously accepted the Public Safety Committee Regular Meeting Minutes dated May 7, 2014.

14. Review of the Public Affairs Committee Minutes dated May 7, 2014:

a. Andrew Mayer, Esq. of Dilworth Paxson, LLP, reviewed aspects of the issuance of a new bond and refunding of two (2) current bonds.

Upon motion of Mr. McKeown, the Board of Commissioners unanimously adopted **Ordinance No. 2281-14** authorizing the issuance of a new bond and the refunding of Series 2004B and 2009 General Obligation Bonds in an amount not to exceed \$12,565,000 (see attached).

b. Upon motion of Mr. McKeown, the Board of Commissioners unanimously adopted **Resolution No. 17-14** authorizing the Township's filing of Transportation and Community Development Initiative Grant to assist in a walk-ability/bike-ability audit sponsored by the Delaware Valley Regional Planning Commission (see attached).

c. Upon motion of Mr. McKeown, the Board of Commissioners unanimously accepted the Public Affairs Committee Regular Meeting Minutes dated May 7, 2014.

15. Review of the Building and Zoning Committee Regular Meeting Minutes dated May 7, 2014:

a. Upon motion of Mr. Simon, the Board of Commissioners unanimously approved the scheduling of a Public Hearing for this evening, Wednesday, May 21, 2014 to hear any and all comments from the public to consider the adoption of a proposed Ordinance amending the Code of the Township, Section 925, "Zoning", Article XXI, establishing a Floodplain Conservation District Overlay.

b. PUBLIC HEARING: Upon motion of Mr. Simon, the Board of Commissioners unanimously opened the Public Hearing (referenced above), which was conducted by Mr. Bagley.

[A transcript of the Public Hearing is recorded as *Notes of Testimony*].

Upon motion of Mr. McKeown, the Board of Commissioners unanimously concluded the Public Hearing.

c. Mr. Simon noted that said Ordinance is important so that residents can continue to qualify for flood insurance under the National Flood Insurance Program. Mr. Haywood suggested public educational efforts since some residents were uncertain about the Ordinance and that it be revisited in the future to consider if it could need amending.

d. Upon motion of Mr. Simon, the Board of Commissioners unanimously adopted **Ordinance No. 2282-14** amending the Code of the Township, Section 925, "Zoning", Article XXI, establishing a Floodplain Conservation District Overlay (see attached).

e. Upon motion of Mr. Simon, the Board of Commissioners unanimously accepted the Building and Zoning Committee Regular Meeting Minutes dated May 7, 2014.

16. Under New Business:

a. Upon motion of Mr. Sharkey, the Board of Commissioners unanimously appointed Harvey Portner as the Township's voting delegate to the upcoming Pennsylvania State Association of Township Commissioners Convention and appointed Charles D. McKeown as the alternate delegate.

b. Discussion continued regarding the scheduling of a Public Hearing for an Ordinance amending the zoning of the former Dominican Retreat House to M4 to allow for its adaptive reuse.

Representatives of Apeiron Company, the developer, were present. Mr. Muayad Abbas, Chief Development Officer, gave a presentation (complete copy available on the Township's website). He reviewed the following: demographics; current representative projects around the world that are conducive to the property; future flagship projects; acreage of the property; the age and preservation of the structures on the property; current zoning; zoning of neighboring properties; objectives and highlights of the proposed Ordinance; compatibility of M4 zoning with neighboring properties; building and green coverages; views from the street; setback; required riparian buffer; focus of development to be around Elstowe Manor, St. Catherine's Hall and Chelton House rather than scattered development; the plan for 50 housing units of condominiums that will not be age-restricted but will not be a product appealing to families.

Mr. Norris asked about the requirement to preserve the buildings. Mr. Abbas responded that they are not required to be preserved under the proposed Ordinance but it is the intent of Apeiron Company to preserve them. Mr. Simon asked about development and impervious surfaces. Mr. Abbas stated that his company wants to develop in a specific, focused location on the property, and not have new development spread out all over the grounds, which will help preserve the grounds, and there will be no more than 55% impervious surfaces, including the new buildings. He stated that most of the parking will be underground. Mr. Bagley noted that the definitions for building and impervious surface coverages will have to be addressed in the Ordinance.

In response to questions from Mr. Haywood, Mr. Bagley stated that in light of this evening's presentation by the developer, certain sections of the Ordinance need further clarification, and an objective review by the land planner will be needed. He suggested that the Commissioners wait for the land planner's recommendations, and he will be the repository for any comments from the Board and the public.

Mr. Simon suggested that the Commissioners schedule a Public Hearing this evening and compile the recommendations of the land planner and comments from the public in the interim. He felt this was a great opportunity for the property with an experienced and financially sound developer.

Mr. Norris supported scheduling a Public Hearing until after the Township receives the land planner's recommendations.

In response to a question from Mr. Haywood, there was discussion about the consequences should the developer's Master Plan for the site be inconsistent with the Ordinance. Mr. Bagley explained the ramifications. Mr. Haywood asked if tonight's presentation could suffice as a Master Plan. Mr. Bagley responded that it did not since it lacked specificity in several areas, which makes it basically incomplete. It was Mr. Haywood's opinion that certain language in the Ordinance needed more specificity; there should be a requirement for the application of certain standards; there should be review of the Ordinance by the Shade Tree Advisory Commission and Planning Commission; and an environmental assessment and impact to the value of surrounding properties should be considered. He favored proceeding with the process of Ordinance adoption but at the same time, acquiring all possible input on it.

Mr. Simon noted that the Ordinance does allow for review by the Planning Commission, Shade Tree Advisory Commission, and Historical Commission. In Mr. Simon's opinion, the parcel consists of 44 acres for which this developer is willing to have a Master Plan when it is a property that could be sub-divided into all different types of uses. He noted that environmental standards are part of the land development process.

Mr. McKeown supported moving the process forward but with all the necessary specificity.

Mr. Sharkey asked about the hotel/residential units. Mr. Abbas responded that plans called for approximately 50-150 hotel units and 180-240 residential units. Mr. Sharkey suggested narrower ranges. He supported keeping the process moving forward but wanted a land planner's review.

### Public Comment

David Cohen supported the process for a Public Hearing moving forward; he was concerned about: spot zoning and asked that this be addressed; the integrity of Elstowe Manor since it is not addressed in the Ordinance; good design features.

Michael Skolnick thanked the developer for preserving the historic resources and the open space; he was concerned the Ordinance would get bogged down in details and felt that the points in question could be worked out as the process moves along; he felt it was a positive development.

Ethan Chebot-Goldman questioned the spacing between the buildings, a requirement for minimum spacing, and whether the new buildings would be green certified. Mr. Simon responded with details of the footprints and height limits in relation to historic resources.

Fred Milbert did not understand how a developer would purchase a property without knowing the exact amount of units to be built; he was concerned that work could start and be abandoned. Mr. Abbas stated that he has an idea on the number of units but was not comfortable stating it this evening. Mr. Simon noted that the Ordinance allows for a cap of 250 multiple dwelling units even if the developable acreage allows for more. Mr. McKeown felt that it was unnecessary that this information be furnished as this time.

Brad Pransky believed the project was a good one but cautioned against false deadlines or postponement; it should be reviewed by the Township's land planner; it should be in compliance with the Township's draft Zoning Code revision; mixed use balances residential and commercial, and this could help improve the balance.

Sr. Ann Lythgoe represented the Dominican Sisters of St. Catherine de Ricci. She stated that the proposed hotel will be a high end, destination hotel; it would bring commerce to the community; will not have a negative impact on the School District; for her order of nuns, it is a high maintenance and high expense property, and it is urgent for them to move forward; she asked that the Commissioners take action this evening.

Karen Helstrom stated that she sent out over 200 e-mails to neighbors and did not receive any negative responses.

Discussion ensued about scheduling a Public Hearing. Ms. Rappoport stated that she would abstain from voting on any motion since she had difficulty hearing some questions and responses and felt her information was incomplete. Mr. Bagley stated that the current Ordinance will have to be modified to incorporate suggestions discussed this evening as well as comments from the Commissioners, the public and the land planner's recommendations. He reviewed the Public Hearing and Ordinance adoption process.

c. Upon motion of Mr. Simon, the Board of Commissioners approved the scheduling of a Public Hearing for Monday, July 21, 2014, at 7:30 p.m., at Curtis Hall, to hear any and all comments from the public regarding the adoption of an Ordinance pertaining to the rezoning of the former Dominican Retreat House property to M4 zoning to allow for its adaptive reuse (Ayes: Haywood, McKeown, Norris, Portner, Sharkey, Simon; Abstain: Rappoport) (see attached).

d. There was discussion about hiring Kenneth Amey as the Township's land planner to review and make recommendations on the proposed M4 Zoning Ordinance. Ms. Rappoport suggested consideration of another land planner. Mr. Sharkey responded that would result in the Township having to go out for a Request for Proposal. Mr. Simon opposed a \$1,000 cap on Mr. Amey's fee and suggested that the Township Manager be granted discretion if the fee exceeds \$1,000.

Upon motion of Mr. Sharkey, the Board of Commissioners agreed to hire Kenneth Amey, 1122 Old Bethlehem Pike, Lower Gwynedd, PA, as the Township's consulting land planner to review and make recommendations on the proposed Ordinance rezoning the property known as the former Dominican Retreat House at 1750 Ashbourne Road, Elkins Park, to M4 zoning, for a fee of \$1,000 with any additional fee approved by the Township Manager (Ayes: McKeown, Norris, Portner, Sharkey, Simon; Nay: Haywood; Abstain: Rappoport).

17. Under Citizens' Forum – None.

There being no further business, upon motion of Mr. Portner, the Board of Commissioners unanimously approved adjourning the meeting at 8:30 p.m.



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Bryan T. Havir  
Township Manager

as per Anna Marie Felix

**Resolution No. 7-14**  
**of the Board of Commissioners of Cheltenham Township**

*Whereas,* THE BOARD OF COMMISSIONERS OF CHELTENHAM TOWNSHIP, Montgomery County, Pennsylvania, with great admiration and respect, honors **BRUCE WILLIAMS** of Elkins Park on the occasion of his retirement as Principal of Glenside Elementary School after over 10 years of dedicated service; and

*Whereas,* Prior to his tenure at Glenside, **BRUCE WILLIAMS** worked at both Myers and Wyncote Elementary Schools as a classroom teacher. He then transitioned to the middle school years and held the role of Assistant Principal at Cedarbrook Middle School. Combined, **BRUCE WILLIAMS** faithfully served the Cheltenham School District for 31 years and held the honored role of a professional educator for a total of 40 years over the duration of his career; and

*Whereas,* In August 2010 **BRUCE WILLIAMS** was proud and honored to open the doors of the new Glenside Elementary School, ushering in a new academic era for students and staff in a state-of-the-art facility. His valuable experience, expertise and warm nature are certainly missed by all of his former students and colleagues since his retirement on January 12, 2014.

NOW, THEREFORE, BE IT RESOLVED that the BOARD OF COMMISSIONERS OF CHELTENHAM TOWNSHIP, duly convened in regular session this Twenty-First Day of May, A.D., 2014, does hereby officially honor **BRUCE WILLIAMS** for his dedicated service to the Cheltenham community and wishes him good fortune in all his future endeavors. It is further directed that this Resolution be spread in full upon the minutes of this meeting and that a copy thereof be presented to Mr. Williams.

IN WITNESS WHEREOF, I, HARVEY PORTNER, President of the BOARD OF COMMISSIONERS OF CHELTENHAM TOWNSHIP, have hereunto set my hand and caused the Seal of the Township of Cheltenham to be made a part thereof. DONE AT ELKINS PARK, PENNSYLVANIA, in the year of the Township of Cheltenham, the one hundred and fifteenth.

**BOARD OF COMMISSIONERS  
OF CHELTENHAM TOWNSHIP**



By: \_\_\_\_\_  
Harvey Portner, President



Attest: \_\_\_\_\_  
Bryan T. Havir  
Township Manager and Secretary



PUBLIC ATTENDANCE LIST



# Board of Commissioners Meeting

Wednesday, May 21, 2014 @ 7:30 P.M.

**Curtis Hall**

1250 W. Church Road, Wyncote, PA 19095

(Please Print Clearly)

Print Name	Mailing Address	Telephone Number	E-mail Address
Bill Chantares	1831 CHELSE LA NOTT	215-635-7284	
Michael Skolnick	8210 Brookside Rd Elkins Park	215 635 1741	
Eileen & Pete Douglas	5 Develon Melrose Plk	215-635-4473	
Alicia Bailey	7807 Caversham Elkins Park PA	215-635-2443	
Thomasenna Amos	3808 Toby Leech Elkins Park		
Ethan Chebot-goldman	705 Glenside Wyncote Ave	215-887-7030	chebgold@msn.com
Ann Moseley	7809 Toby Leech	215-635 6487	
Pong Adeluph	160 Marwa Rd E.P. PA	215 782- 3045	
ROBERT Hyslop	GLENSIDE 211 HARRISON E. P.	215-886-0813	
Violet Zeitlin	7706 Sycamore Ln EP	215-635-1587	
CAROL SIEGEL	ROVALE DR	215-782-1367	
KARIN HELSTROM	AUSSEM RD EP	215-782-1233	





APPEAL OF MATRIX-ASHBOURNE : IN THE COURT OF COMMON PLEAS OF  
ASSOCIATES, L.P. FROM THE : MONTGOMERY COUNTY, PENNSYLVANIA  
DECISION OF THE CHELTENHAM :  
TOWNSHIP ZONING HEARING : NO. 2011-06678  
BOARD DATED FEBRUARY 15, 2011 :

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2014, upon consideration of the Stipulation and Settlement Agreement executed by the parties in the above-captioned litigation, as well as in the litigation at Docket No. \_\_\_\_\_, which by this Order is hereby consolidated with the above-captioned matter, the Stipulation and Settlement Agreement is **APPROVED** by the Court and shall be entered as an Order of the Court.

BY THE COURT:

\_\_\_\_\_  
J.

**Christen G. Pionzio, Esquire**  
**Hamburg, Rubin, Mullin, Maxwell & Lupin, P.C.**  
**375 Morris Road**  
**P.O. Box 1479**  
**Lansdale, PA 19446-0773**

*Attorney for Matrix Ashbourne Associates,  
L.P.*

**APPEAL OF MATRIX-ASHBOURNE : IN THE COURT OF COMMON PLEAS OF**  
**ASSOCIATES, L.P. FROM THE : MONTGOMERY COUNTY, PENNSYLVANIA**  
**DECISION OF THE CHELTENHAM :**   
**TOWNSHIP ZONING HEARING : NO. 2011-06678**  
**BOARD DATED FEBRUARY 15, 2011 : 2011-17493**

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**STIPULATION AND SETTLEMENT AGREEMENT**

It is hereby stipulated and agreed by and among Matrix Ashbourne Associates, L.P. ("Matrix"), by and through its attorney, Christen Pionzio, Esquire; Cheltenham Township ("Township") by and through its solicitor, Joseph Bagley, Esquire; Cheltenham Township Zoning Hearing Board ("ZHB"), by and through its solicitor, Carol Lauchmen, Esquire; and CC4A ("CC4A"), by and through its attorney, David. C. Onorato, Esquire, as follows:

**BACKGROUND**

At all times relevant to this appeal, Matrix has been the owner of a tract of land containing 107.6 acres, more or less, located at 1100 Ashbourne Road, Cheltenham Township, Pennsylvania, identified as Montgomery County parcel no. 31-00-00688-00-1, commonly referred to as the Ashbourne Country Club ("Property").

The Property is located in the R-1 Residence District ("R-1 District"), the Preservation Overlay District, and the Steep Slopes Conservation District and was formerly located in the Age Restricted Overlay District, all under the applicable provisions of the Cheltenham Township Zoning Ordinance. The Zoning Ordinance has been in effect at all times relevant.

In furtherance of the intent to develop the Property as a residential development, Matrix filed an application with the Cheltenham Township Zoning Hearing Board ("ZHB"), appealing the determination of the Zoning Officer and seeking relief to facilitate the development of the Property as an age-restricted residential development. The age-restricted development had been permitted as a special exception in the R-1 District pursuant to Section 295-242(B)(1) of the Zoning Ordinance.

The plan submitted with the Matrix application proposed to develop the Property as a residential development consisting of 226 lots, on which 156 attached single-family homes and 70 single-family detached homes would be constructed, together with a central clubhouse and 67 acres of "open space" land.

Following the conclusion of the public hearings, on February 15, 2011, the ZHB issued a letter confirming the ZHB's grant of relief to Matrix ("ZHB Notice of Decision"). A true and correct copy of the ZHB Notice of Decision is attached as Exhibit "A". The ZHB Notice of Decision notified Matrix that the ZHB granted a special exception to develop the Property in accordance with the Plan, subject to nine (9) enumerated conditions. Thereafter, the ZHB issued detailed Findings of Fact and Conclusions of Law in support of the ZHB Notice of Decision dated May 27, 2011 ("ZHB Detailed Decision"). A true and correct copy of the ZHB Detailed Decision is attached hereto, as Exhibit "B".

Matrix filed an appeal from the ZHB Notice of Decision, appealing the denial of certain relief and the imposition of certain conditions which was indexed at docket No. 2011-0678. CC4A filed a notice of intervention in the Matrix appeal. The ZHB filed a Motion to Quash the Matrix appeal on the basis that the appeal was untimely filed. CC4A filed an appeal from the ZHB Detailed Decision which was indexed at docket No. 2011-17493.

Matrix, Township, ZHB and CC4A have reached agreement on the terms of a settlement which will resolve all of the issues raised by CC4A's appeal (Docket No. 2011-17493) and Matrix's appeal (Docket No. 2011-06678). This Stipulation and Settlement Agreement ("Agreement") is entered into to confirm the agreement of the parties.

#### TERMS OF SETTLEMENT

1. **Settlement Plan.** The parties have agreed on certain terms for the development of the Property consisting of a maximum of 166 dwelling units, which shall include an open market (non-age restricted), residential subdivision containing single family detached residences and townhouse units with no more than 95 townhouse units. Market changes may cause Matrix to develop the Property entirely as single family detached dwellings with no townhouse units. Although the sketch plan for Matrix prepared by Taylor, Wiseman and Taylor dated October 25, 2013 ("Plan") depicts a 166 unit development (with a mix of single family detached dwellings and townhouses), the parties agree that the number of each housing unit may change. Therefore, and notwithstanding anything to the contrary contained herein, the parties agree that the Property shall be developed in substantial conformity with the Plan and with the following terms and physical conditions remaining fixed: the total number of dwelling units at 166 with no more than 95 townhouse units; the impact on steep slopes; the open space; the connection points to exterior road systems; the turning movement restrictions; and the protected buffer areas (together the "Fixed Terms"). For the purposes of this Agreement, the Plan, as described in this paragraph may be modified except for those certainties contained in this Agreement shall be referred to as the "Settlement Plan." The Settlement Plan is made a part of this Agreement and attached hereto as Exhibit "C." In addition, the parties acknowledge that the Property may be developed in accordance with the Uniform Planned Community Act or the Condominium Act and may be designed in a master plan-type procedure with varying phases.

**2. Subdivision and Land Development Procedure.** Matrix may proceed with an application to develop the Property in accordance with and in furtherance of this Agreement by preparing and filing preliminary and/or final subdivision and land development plans ("PFSLD Plans") with the Township. The PFSLD Plans shall be in substantial conformity with the Settlement Plan and in strict compliance with the terms of this Agreement. The development of the Property shall be contained within the center of the Property as shown in white on the Settlement Plan (see Exhibit "C"); however, in no event, shall the steep slopes be disturbed in excess of what was shown to the Zoning Hearing Board at the public hearings as further discussed in Paragraph 3.j. below. Township agrees to process the PFSLD Plans and any revisions thereto in good faith and will review and process the PFSLD Plans in a single approval process so that Matrix shall not be required to obtain a separate Preliminary Plan approval (as defined in the Township's Subdivision and Land Development Ordinance ("SALDO")) prior to submitting Final Plans for review and approval. Instead, if Matrix chooses to combine the Preliminary and Final Plan applications and reviews into one submission, the Township shall consider both at the same time and, if warranted, grant Preliminary and Final Land Development Approval. Nothing herein should be construed to limit the authority of the Township to impose reasonable conditions upon any PFSLD Plan approval. "Reasonable conditions" shall mean any such conditions which do not reduce the density depicted on the Settlement Plan. The Township hereby grants those waivers from the Township SALDO, which are enumerated on the Settlement Plan under the heading "Waivers Granted." In addition, the Township agrees to grant (during the Subdivision and Land Development process) such other waivers as shall be necessary to implement the Fixed Terms except for any waivers which, in the reasonable opinion of the Township Engineer, would result in an adverse impact upon the public health, safety or welfare. Matrix may request additional waivers not enumerated herein during the review of the PFSLD

Plans. Notwithstanding what is shown on the Settlement Plan and unless waived during the review and approval of the PFSLD Plans, Matrix shall install sidewalks along the entire frontage of Asbourne Road (West to East –meaning to the left of the intersection with Oak Lane Road and to the right) and then continuing North ending at Jenkintown Road, as shown on the Settlement Plan (see Exhibit “C”).

3. **Zoning Requirements.** Matrix shall have the right to develop the Property in substantial conformity with the Settlement Plan and this Agreement, without further zoning approvals or zoning variances now or hereafter required by the Zoning Ordinance, for a period of seven (7) years from the date of the Court Order approving this Agreement. However, the seven (7) year period shall be tolled for the duration of: any appeal of any approval or permit relative to the development of or construction on the Property, any legal maneuver or filing of any sort that interferes with the commencement or completion of the development of or construction on the Property or while a moratorium or prohibition of any sort is pending until such appeal(s), maneuver(s), or filing(s) is/are finally adjudicated or said moratorium or prohibition is lifted. Matrix waives the application of Act 46 of 2010 and Act 87 of 2012 to extend the validity of this Agreement and the Settlement Plan. The variances previously granted by the ZHB in the ZHB Detailed Decision are incorporated herein by reference as though set forth at length. The parties hereby agree that no further zoning relief, including but not limited to variances, is necessary to develop the Property in compliance with the Settlement Plan and this Agreement. The parties further agree that the following requirements shall govern the development of the Property and shall supersede any contrary requirements of the Zoning Ordinance, if any:

- a. **Dwelling Unit Setback.** No residential dwelling units shall be permitted to be constructed within one hundred and forty (140) feet of the perimeter of the Property with road frontage.
- b. **Clubhouse Facility.** Matrix shall not be required to construct a clubhouse facility in connection with the development of the Property.
- c. **Buffers.** Matrix shall preserve the existing mature trees on the perimeter of the Property, unless it is determined that certain trees cannot or should not be preserved due to age, species, condition or the development of the Property.
- d. **Landscaping.** Condition #6 of the ZHB Detailed Decision (see p. 34 of Exhibit "B") shall be amended and replaced with a condition that requires Matrix to install plantings within the exterior Buffer areas as illustrated on the Settlement Plan (see Exhibit "C") with 75% of the trees measuring a minimum of 4" – 5" DBH at the time of planting.
- e. **Parking.** There shall be no maximum parking ratio applicable to the development of the Property, but the impervious coverage limitations of 55% of the Property and open space limitations of 45% of the Property shall apply with due credit for the Open Space to be conveyed to the Township as set forth below. The ability to include the Open Space applies only to the development contemplated herein.
- f. **Open Space.** In order to facilitate development of the Property in accordance with the Settlement Plan, the parties acknowledge that the Township will not require open space in excess of the open space shown on the Settlement Plan. Matrix shall transfer 33± contiguous acres of open

space identified on the Settlement Plan colored in green and labeled "Open Space limits" (the "Open Space") (see Exhibit "C") to the Township at such time as the first land development and financial security agreements are funded by Matrix. The Open Space shall continuously be used exclusively for the public for recreation, public trail, public access park land, open space and/or natural resources conservation. The Open Space shall not be built upon by Matrix at any time, except in accordance with the easement referred to below in Paragraph "m" (i.e., stormwater management facilities and utilities and as otherwise provided for herein). Matrix shall also pay One Hundred Fifty Thousand Dollars (\$150,000) to the Township as a contribution towards future maintenance of the Open Space ("Maintenance Fund"). The Maintenance Fund shall be paid to the Township by Matrix at such time as the first land development and financial security agreement is funded by Matrix. The parties shall execute and record an access easement to the existing trail in the Open Space in favor of the Township and the public within 90 days of the execution and court approval of this Agreement, providing access to the trail through the Open Space from a point along Jenkintown Road to the point at the pedestrian bridge which is to remain. The access easement shall provide that the easement expires if approval of the PFSLD Plans is not granted within 180 days of their submission. The Township shall obtain insurance coverage for the trail described above and name Matrix as an additional insured on such insurance coverage. Matrix shall be fully responsible for maintenance of the Open Space in accordance with the

Township Property Maintenance Code until at least seventy-five percent (75%) of the residential dwellings constructed on the Property have been sold and occupied. In the event not already constructed, Matrix shall escrow for and construct a pedestrian trail and bridge as depicted on the Settlement Plan as part of the public improvements in the initial phase. The pedestrian trail shall be paved where it is located within ninety (90) feet of the Tookany Creek. The pedestrian trail shall be constructed of natural materials or macadam where it is more than ninety (90) feet from the Tookany Creek, the choice of which type of construction material shall be Matrix's.

- g. **Maintenance Access.** Two small, paved areas, depicted on the Settlement Plan, shall be constructed by Matrix and shall provide maintenance access to the Open Space from Ashbourne Road and from Jenkintown Road for mowers and other powered equipment. An existing maintenance access in the southwest corner of the Open Space off of Mulberry Lane and the one in the northwest corner off of Tookany Creek Parkway shall remain.
- h. **Pedestrian Access.** Pedestrian access to the trail through the Open Space depicted on the Settlement Plan shall be constructed by Matrix at points depicted in the Settlement Plan: (1) adjacent to Ashbourne Road across from its intersection with Hanes Road; and (2) along Jenkintown Road as depicted on the plan. The materials to be used for constructing the trail shall be determined during the subdivision and land development process.
- i. **Trees.** Matrix has removed 3 dead trees within the Open Space area at the time this Agreement is executed. Matrix agrees to remove additional

trees after the PFSLD Plans are recorded and the Open Space transferred to the Township, but is not obligated to spend more than \$50,000.00 on all tree removal within the Open Space. The cost of removing the 3 trees referred above shall be credited against the \$50,000.00. Receipts shall be provided to the Township upon request.

- j. **Steep Slopes.** Disturbance of steep slope areas shall be no greater than what was presented at the ZHB hearings as confirmed by a licensed professional engineer.
- k. **Lines and Grades Plans.** Applicant shall submit Lines and Grade Plans, compliant with the SALDO for areas of disturbance only, as part of Matrix's request for PFSLD Plan approval. This shall replace Condition #3 of the ZHB Detailed Decision (see p. 33 of Exhibit "B").
- l. **Bus Shelters.** Matrix shall provide bus shelters at the three bus stops on Ashbourne Road at Croyden Road, Boyer Road and Ashmead Road.
- m. **Easement.** Matrix and the Township shall execute a mutually agreed upon easement agreement which provides that Matrix or its successors shall be fully responsible for the construction, maintenance, replacement and repair of any and all stormwater conveyance facilities and utilities related to the development of the Property (including sanitary sewer conveyance facilities) including, but not limited to, reseeding and regrading of areas of the Open Space disturbed by Matrix in accordance with the foregoing easement agreement, which are constructed or installed within the Open Space. Notwithstanding the foregoing, Matrix shall be permitted to offer a deed of dedication to the Township for the completed

and approved sanitary sewer facilities within the Open Space without responsibility for future maintenance if the deed of dedication is accepted by the Township.

Matrix and the Township shall also execute a mutually agreed upon easement agreement which provides that the Township shall have a 50' wide permanent easement through the Open Space ("Permanent Easement Area") and a temporary easement area for the construction of two temporary construction areas, one within the Open Space, the other located between Tookany Creek and Tookany Creek Parkway with a construction entrance from Tookany Creek Parkway as more fully described on a Plan attached hereto as Exhibit "D" ("Temporary Construction Easement Areas"), for the construction of a sewer line referred to as the Sewer Interceptor "A" ("Sewer Line"). The Township shall include an invert and a short stub of a pipe for future connection by Matrix at Manhole #50 as part of the Sewer Line work. The Township hereby obligates itself to install the Sewer Line and permit connection by Matrix of the 166 units referred to herein; provided however, that Matrix shall be solely responsible for all costs associated with connecting to the Sewer Line, including but not limited to, the cost of constructing and maintaining the sewer line through the Open Space to connect the 166 units at Manhole #50 (the "Conveyance Line") as well as maintenance of the invert and short stub and the costs referred to in Paragraph 11 of this Agreement. It is anticipated that the Township shall begin construction of

the Sewer Line in April 2015 but the timing of construction of the Sewer Line is solely within the discretion of the Township.

The easement agreement shall be in a form that is commercially acceptable, that is reasonably acceptable to Matrix's mortgagor or potential mortgagor and shall at a minimum include the following terms and conditions:

1. The Township shall be obligated to construct the Sewer Line.
  2. The Township shall be obligated to maintain and repair the Sewer Line; Matrix shall be responsible to construct and maintain the Conveyance Line and the connection between the short stub and the Conveyance Line, and to maintain the invert and short stub.
  3. The Permanent Easement Area and the Temporary Construction Easement Areas (collectively "Easement Areas") shall be re-vegetated with grass and Matrix shall not be responsible for any cleanup nor any restoration except for cleanup and restoration (if any) in connection with the construction and maintenance of the invert, short stub and Conveyance Line. Neither the Township nor Matrix shall be responsible for any tree replacement within the Easement Areas. Matrix shall utilize reasonable efforts to avoid removing trees within the Open Space when constructing the Conveyance Line
  4. The Township shall indemnify and hold Matrix harmless relative to the Township's use of the Easement Areas.
  5. Matrix shall be listed as an additional insured in Township's insurance policies for Sewer Line construction at a commercially reasonable amount.
  6. Matrix shall be permitted to do work in the Easement Areas, including but not limited to, the installation of the walking trail and the discharge of storm water which discharge shall be reviewed and approved by all applicable governmental agencies, prior to conveyance of the Open Space to the Township and none of which shall interfere with the Township's use of the Permanent Easement Area, the Temporary Construction Easement Areas nor the Township's use of the Open Space.
- n. **Pedestrian Bridges/Permits.** Matrix shall remove several pedestrian bridges as depicted on the Settlement Plan (Exhibit "C"). To the extent necessary to accomplish same, the Township acknowledges that Matrix

shall be entering the floodplain and the riparian corridor to do so. This paragraph shall not relieve Matrix of the obligation to timely obtain a demolition permit(s) and a building permit from the Township and all necessary permits from DEP and other outside agencies (if necessary) to reconstruct the designated pedestrian bridge and remove the other pedestrian bridges.

- o. **Timing of Enumerated Improvements.** The pedestrian trail in the Open Space, the landscaping to be installed in the exterior Buffer Area, the construction of the pedestrian bridge, the removal of all other pedestrian bridges, the bus shelters and the pedestrian access points referenced above, shall all be completed by Matrix before Matrix shall be entitled to a building permit which would permit construction of its 84<sup>th</sup> unit.

4. **Access to Development.** The primary entrance to the Project shall be in the location depicted on the Settlement Plan to create a four-way intersection with Ashbourne Road and Oak Lane Road. The entrance shall be designed to be perpendicular to Ashbourne Road notwithstanding the design shown on the Settlement Plan (see Exhibit "C"). A second means of access shall be provided to the Property at Boyer Road, in substantially the location depicted on the Settlement Plan. The parties acknowledge and agree that the secondary access shall be limited to right-turn-in-only and right-turn-out-only unless otherwise designed by the Pennsylvania Department of Transportation.

5. **Demolition of Existing Buildings.** During the course of construction Matrix shall apply for all applicable permits and demolish all of the existing buildings on the Property.

6. **Building Materials.** The exterior finishes of the houses shall be in keeping with the stone and brick houses in the neighborhood and shall be materials of same or greater quality as stone veneer, cementitious-like siding or siding of natural materials (not vinyl).

7. **House Orientation.** No rear of a house shall face Ashbourne Road. The parties agree that angled houses that could be situated in the lots as shown on the Settlement Plan (see Exhibit "C") are acceptable.

8. **Compacted Fill.** The bottom of the foundation footing for all structures (including building, retaining walls, etc.) within the Property shall be on subgrade competent to support the load being imposed.

9. **Fees.** Matrix shall not be required to pay any maintenance fees or recreational use fees except those referenced above. Matrix shall be responsible to pay all other costs and expenses of subdivision and development including, but not limited to routine land development application fees, the traffic improvements discussed below (see paragraph 13 below), building permit fees, required escrows including, but not limited to, engineering review expenses, and to incur all costs, expenses and fees required by the Township's standard land development and financial security agreement. These fees shall not include sewer connection and EDU fees as Matrix's obligations for these fees are set forth in paragraph 11 below.

10. **Outside Agency Permits.** The parties shall reasonably cooperate with Matrix in obtaining highway occupancy permits, approval of planning modules, NPDES permits, water quality management permits, and any other permits from regulatory agencies having jurisdiction over the development of the Property.

11. **Sewage Capacity.** The Township acknowledges that in accordance with the letter dated September 10, 2007, Matrix has paid for sufficient sewer capacity (EDUs) to service the Property. Any forthcoming credit or refund to Matrix for excess EDUs shall be for the

amount of the purchase price in 2007 only, without interest. Matrix shall apply, if not already received and only if required, for sewer planning modules and obtain approval of same from DEP prior to applying for a building permit from the Township. This Agreement does not relieve Matrix of any responsibilities for any and all sewer inspection fees, sewer rentals, and Right-of-Way Permit Application Fees (\$50 per street opening and inspection fee) which may have to be constructed or incurred in order to provide sewage service to the Property.

12. **Sales.** Matrix shall not lease any of the residential units. The residential units shall be for sale only. However, any subsequent purchaser that is (1) not a related entity (2) not an entity consisting of Matrix's principals and (3) is not a successor or assignee of Matrix, may lease an individual unit.

13. **Traffic Improvements.** Matrix will install those traffic improvements offered at the ZHB hearings, the details of which will be worked out during the review of the PFSLD Plans.

14. **Court Approval.** This Agreement shall be submitted by Matrix, ZHB, Township, and CC4A to the Court of Common Pleas of Montgomery County with a request that the provisions of the Agreement be entered as an Order of the Court in full and final settlement of all issues raised by the appeals. This Agreement is conditioned upon the issuance of Court Approval. It shall be entered on the docket of Case No. 2011-06678 and No. 2011-17493 with the Court retaining jurisdiction over the matters.

15. **Conflicts.** Where this Stipulation and Settlement Agreement conflicts with the ZHB Notice of Decision and/or the ZHB Detailed Decision, this Stipulation and Settlement Agreement shall control.

16. **Successors.** This Agreement shall be binding on and inure to the benefit of the parties hereto, their grantees, heirs, successors, and assigns. Although Matrix is the legal owner

of the Property, the obligations of Matrix contained herein are intended to be binding on any and all subsequent owners of the Property, if not Matrix, and are not to be interpreted as personal obligations of Matrix. With regard to Paragraph 3.M only, Matrix's successors shall include the homeowner's association created by Matrix or its successor in interest.

17. **Counterparts.** This Agreement may be signed in counterparts with the same force and effect as if all the parties had executed the same original of this Agreement.

**IN WITNESS WHEREOF,** Matrix, Township, ZHB, and CC4A and their respective counsel, have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, with intent to be legally bound.

**Attest:**

\_\_\_\_\_

**Matrix Ashbourne Associates, L.P.**

**By:**

\_\_\_\_\_

**Hamburg, Rubin, Mullin, Maxwell & Lupin P.C.**

\_\_\_\_\_  
**Christen G. Pionzio, Esquire**

**Cheltenham Township**

**Witness**

\_\_\_\_\_

\_\_\_\_\_  
**Wisler Pearlstine, LLP**

**By:**

\_\_\_\_\_

**Joseph Bagley, Esquire  
Solicitor to Cheltenham Township**

**Cheltenham Township ZHB**

**Witness**

\_\_\_\_\_

*[Handwritten Signature]*

\_\_\_\_\_  
**Carol M. Lauchmen, P.C.,**

**By:**

*[Handwritten Signature: Carol M. Lauchmen]*

**Carol M. Lauchmen, Esquire  
Solicitor to Cheltenham Township ZHB**

CC4A

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

\_\_\_\_\_  
David C. Onorato, Esquire

**EXHIBIT "A"**

# Ballard Spahr LLP

1735 Market Street, 40th Floor  
Philadelphia, PA 19103-7599  
TEL 215.664.8100  
FAX 215.864.8999  
www.ballardspahr.com

Neil Sklaroff  
Direct: 215.864.8514  
Fax: 215.864.8999  
sklaroffn@ballardspahr.com

February 15, 2011

**VIA FACSIMILE AND REGULAR MAIL**

Peter S. Friedman, Esquire  
Friedman, Schuman, PC  
101 Greenwood Avenue, Fifth Floor  
Jenkintown, PA 19046-2636

Re: Cheltenham Township Zoning Hearing Board -- Appeal No. 3336

Dear Mr. Friedman:

On February 14, 2011, the Cheltenham Township Zoning Hearing Board voted to take the following actions with regard to your Application to Zoning Hearing Board for Zoning Relief, referenced as Appeal No. 3336:

The Zoning Hearing Board has granted the following relief:

1. a variance from the rules and regulation of the "Floodplain District" as outlined Article XXI, Section 295-156 to allow construction or replacement of the existing 8" T.C. Sanitary Sewer Line (if required) within the 100 Year Floodplain Area;
2. a variance from rules and regulations of the "Steep Slope Conservation District" as outlined in Article XXII, Section 295-167 to allow the construction of free-standing structures, building and retaining walls, internal accessways, driveways, parking areas, swimming pools, sanitary sewers, stormwater management facilities and other underground utilities and landscaping;
3. a variance from the rules and regulations of the "Steep Slope Conservation District" outlined in Article XXII, Section 295-168, to allow a variance to be granted for the development without first meeting the requirement to submit plans conforming to the stated Lines and Grades Plan requirements;
4. a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.1 to permit an Age Restricted Development;

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5. a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.3 to permit a clubhouse with common areas and meeting rooms, indoor and outdoor recreational facilities and maintenance and security facilities;

6. a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.3 to permit a swimming pool for the residents of the Age Restricted Community only;

7. a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.a. to allow sanitary sewer facilities, if required, within the floodplain;

8. a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.d. to allow development within areas having a slope of 15% or greater;

9. a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.e. to allow sanitary sewer facilities, if required, within the Riparian Buffer Areas; and

10. variances from the rules and regulations of the "Preservation Overlay District" as outlined in Article XXIV, Sections 295-187, 295-188 and 295-189 only.

The Zoning Board has, in addition, taken the following actions:

1. denied the appeal of the determination of the Zoning Officer and/or Township Engineer regarding man-made steep slopes as provided in Article XXII, Section 295-164.B.2.;

2. denied the request for a determination that the Lines and Grades Plans as submitted with the Application or as revised during the course of the hearings substantially conforms with the requirements set forth in Article XXII, Section 295-168;

3. denied the request for a determination that the number of parking spaces shown on Applicant's plans are not in excess of the maximum permitted under Article XXIX, Section 295-221.F;

4. denied the request for a variance from the rules and regulations of Article XXIX, Section 295-221.F. to allow parking spaces exceeding 120% of the minimum required parking spaces;

5. denied the request for variances from the rules and regulations of the "Preservation Overlay District," as outlined in Article XXIV, Section 295-190; and

6. denied the request for an interpretation that the rules and regulations of the "Preservation Overlay District," as outlined in Article XXIV, Section 295-187 *et seq.* are not applicable to this Application.

The above grants of zoning relief are subject, however, to the following conditions:

1. At applicant's expense, the Township shall direct a third-party professional geotechnical engineer, acceptable to the Township, to conduct, based upon an adequate number of soil borings, a comprehensive Geotechnical Investigation and Analysis (the "Analysis"). The Analysis shall be performed over the entire development footprint to determine the suitability of the site's soils for the proposed development and the loads to be imposed thereon. The Analysis shall document findings and set forth whatever soil remediation and/or construction methods should be taken to prevent excessive settlement, slope failure and other adverse effects to the maximum practicable extent. The Analysis shall be subject to the review and approval of the Township Engineer. Applicant shall thereafter follow the soil remediation measures and the construction methods as directed by the Township Engineer.

2. The bottom of the foundation footing for all structures (including building, retaining walls, etc.) within the development shall be on a level either a minimum of three (3) feet below the existing pre-development grade or on subgrade competent to support the load being imposed, whichever level is lower. No pile footings shall be permitted.

3. Applicant shall submit Lines and Grades Plans, compliant with no standard less than the Zoning Code, as part of Applicant's submission for preliminary or final land development approval.

4. The development may be built in stages. However, the following infrastructure improvements shall be completed with the first stage: naturalization of the property including the return of portions of the property to a natural state, the allocation of property to public use and the other features of the development plans described by applicant's land planner.

5. No building, including, but not limited to, lots 67, 68, 69 and 70 as illustrated on Exhibit A-26.1, shall have the rear elevation facing Ashbourne Road.

6. 75% of the trees planted on the development shall be a minimum of 4" – 5" DBH at the time of planting, as illustrated on Exhibit A.3, dated July 8, 2010.

Peter S. Friedman, Esq.  
February 15, 2011  
Page 4

7. Applicant shall provide bus shelters at the three bus stops on Ashbourne Road at Croyden Road, Boyer Road and Ashmead Road.

8. Unless otherwise prohibited by the decisions of the Zoning Hearing Board or by application of lawful federal, state or local regulations, the development shall be constructed in substantial conformity with the record, including testimony and exhibits, established by the Applicant and its witnesses during the course of the hearing in this appeal.

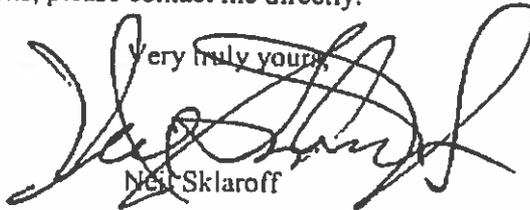
The Zoning Hearing Board will hereafter issue formal written findings of fact and conclusions of law, and appropriate parties will have 30 days from the issuance of those in which they may elect to file an appeal to the Montgomery County Court of Common Pleas. Applicants who elect to take action premised on the decision of the Zoning Hearing Board in advance of the expiration of the appeal period may do so at the applicant's own risk.

Please note that, pursuant to the Article XXVII, Section 295-210, where an application for special exception or variance has been refused or denied by the Zoning Hearing Board, the application may not be renewed within a period of one (1) year, unless there has been a change in conditions and unless the renewed application distinctly sets forth the changed conditions.

In addition, pursuant to Article XXVII, Section 295-211, unless the Zoning Hearing Board stipulates otherwise in its orders and decision, all decisions, grants of zoning relief and reasonable accommodations shall be effective for a period of two (2) years, after which time, if the applicant has failed to commence the use or obtained a building permit, the decision, grant of relief or reasonable accommodation shall cease and be of no effect.

Moreover, a building permit is required for any construction permitted or allowed in accordance with the above decisions.

If you have any questions, please contact me directly.

Very truly yours,  
  
Neil Sklaroff

NS/lb

cc: David Onorato, Esquire  
David S. Lynch  
David Kraynik  
Zoning Hearing Board

**EXHIBIT "B"**

**ZONING HEARING BOARD  
OF CHELTENHAM TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA**

**APPEAL NO. 3336**

**Applicant:** Matrix Ashbourne Associates, L.P.

**Subject Premises :** 1100 Ashbourne Road ("Ashbourne Country Club"  
Cheltenham, Pennsylvania

**Owner of Premises:** Matrix Ashbourne Associates, L.P.

**Nature of Application:** Applicant appeals from the determination of the Zoning Officer finding that development of the Ashbourne Country Club for age-restricted residences as proposed would violate the Cheltenham Zoning Ordinance of 1929, as amended, and, specifically, Article XXII, Sections 295-156, 164-168, regulating development in a floodplain and in areas designated as having steep slopes, Article XXIX, Section 295-221, regulating the provision of parking areas, Article XXIII, Section 295-242, regulating development in the Age-Restricted Overlay District, and Article XXIV, Section 295-241, regulating development in a Preservation Overlay District.

Applicant seeks the following zoning relief:

- (1) a variance from the rules and regulations of Section 295-156 to allow the replacement of an existing 8" T.C. Sanitary Sewer Line, if required, within the 100 Year Floodplain Area;
- (2) a decision that the determination of the Zoning Officer and/or Township Engineer pursuant to Section 295-164(B)(2) with regard to man-made steep slopes was in error;
- (3) a variance from the rules and regulations of Section 295-167 to allow the construction of free-standing structures, buildings and retaining walls, internal access ways,

driveways, parking areas, swimming pools, sanitary sewers, stormwater management facilities, other underground utilities and landscaping in areas designated as having steep slopes;

- (4) a decision that the Lines and Grade Plans submitted with the Application for Zoning Relief substantially conforms with the Line and Grade Plan(s) requirements set forth in Section 295-168;
- (5) in the alternative to (4) above, a variance from the rules and regulations of Section 295-168 to allow for the submission of plans that do not conform to requirements for Line and Grades Plans;
- (6) a decision that the number of parking spaces shown on Applicant's plans do not exceed the maximum permitted pursuant to Section 295-221(F);
- (7) in the alternative to (6) above, a variance from the rules and regulations of Section 295-221(F) to allow greater parking (568 parking spaces) instead of the maximum permitted of 120% of the required parking spaces;
- (8) a special exception to Section 295-242(B)(1) to permit an age-restricted development;
- (9) a special exception to Section 295-242(B)(3) to permit a clubhouse, meeting rooms, common areas, indoor and outdoor recreational facilities, and maintenance and security facilities appurtenant to an age-restricted development;
- (10) a special exception to Section 295-242(B)(3) to permit a swimming pool for the residents of an age-restricted development;
- (11) a variance from the rules and regulations of Section 295-242(B)(8)(a) to allow sanitary sewer facilities, if required, within the

floodplain;

- (12) a variance from the rules and regulations of Section 295-242(B)(8)(d) to allow development associated with an age-restricted development in areas designated as having a slope of 15% or greater;
- (13) a variance from the rules and regulations of Section 295-242(B)(8)(e) to allow sanitary sewer facilities, if required, within areas designated as Riparian Buffer Areas;
- (14) a variance from the application of all provisions of Article XXIV, the Preservation Overlay District, to allow the development of the proposed age-restricted development; and
- (15) in the alternative to (14) above, a decision, pursuant to Section 295-241, that the rules and regulations of the Preservation Overlay District do not apply to proposed age-restricted development.

Date and Place of Hearings:

September 14, 2009, January 11, 2010, March 8, April 12, 2010, April 20, May 10, June 8, June 21, July 13, July 27, August 9, September 14, October 14, November 23, December 14, 2010, and January 10, 2011

Curtis Hall  
Church Road and Greenwood Avenue  
Wyncote, Pennsylvania

#### **FINDINGS OF FACT**

1. Applicant Matrix Ashbourne Associates, L.P. ("Applicant" and "Matrix") is the owner of the premises known as 1100 Ashbourne Road, Cheltenham, Pennsylvania (the "Property" and "Ashbourne").

2. Prior to the holding of hearings in this matter, advertisements, noting the time and place of the hearings and the contents of the appeal, were placed in a newspaper of general circulation.

3. The Property is located in an R-1 Residence District and is improved by a number of buildings that were formally used in the operation of a golf course and country club.

4. In advance of the hearings and during the course of the hearings, Matrix and others filed with the Zoning Officer or presented to the Zoning Hearing Board a number of documents. Because many of the documents reflected duplication or minor revisions that the parties considered inconsequential, the parties agreed to a list of official exhibits that members of the Zoning Hearing Board would have available in deliberating on the requests for zoning relief. The following documents were derived from that list and were made a part of the record (numbers in parenthesis were original exhibit numbers):

ZHB-1. a listing of exhibits;

ZHB-2. copies of the legal notices with regard to the holding of hearing;

ZHB-3. an Application to the Zoning Hearing Board, referenced as Appeal No. 3336 with addendum (the "Application");

ZHB-4. a location map marked as Real Estate Registry Block 61, illustrating the location of the property;

ZHB-5. MEA Land Record Parcel Information on Property dated May 26, 2010;

ZHB-6, 6.01, 6.02. Building and Zoning Committee recommendation letters dated June 8, 2010, July 9, 2009 and September 22, 2009;

ZHB-7. Revised Addendum to Application dated August 14, 2009 (14.1,2.,3);

ZHB 8. Age-Restricted Overlay District Ordinance No. 215A (10.1 – 10.11);

ZHB 9. R-1 Residence District requirements, Chapter 295, Article III, Cheltenham Code (11.1 – 11.4);

ZHB 10. letter from Peter Friedman, Esquire, dated October 4, 2009, amending the Application (17.1 – 17.2);

ZHB 11. letter from Peter Friedman, Esquire, dated February 19, 2010, amending the Application (18.1 – 18.2)

ZHB 12. Revised Addendum to Application, dated May 10, 2010 (57.1 – 57.2);

ZHB 13. O'Neil Review Letter, dated June 1, 2010 (60.1 – 60.2);

ZHB 14. Amended Zoning Plan prepared by Taylor Wiseman & Taylor, including 2 sheets, prepared August 14, 2009 and last revised May 3, 2010 (61.1 – 61.2);

ZHB 15. Amended Steep Slopes Plan prepared by Taylor Wiseman & Taylor, dated August 14, 2009 and last revised May 3, 2010 (62);

ZHB 16. Current Site Plan submitted June 2, 2010 (63);

ZHB 17. Site Plan – Conceptual Phasing Plan (64);

ZHB 18. Letter from David Onorato, Esquire, dated November 3, 2010 regarding request for relief (66);

ZHB 19. Letter from Peter Friedman, Esquire, dated November 23, 2010 with attachments (87);

A-1.1, 1.2. Amended Zoning Plan, comprised of 2 sheets and dated August 14, 2009, and last revised June 7, 2010;

A-2.1, 2.2. curriculum vitae of Stuart Appel;

A-3.1 – 3.13, 3.15 – 3.25. Plans, photographs and renderings of Ashbourne Country Club prepared by WellsAppel for Matrix Development Group;

A-4. Architectural Review including photographs and design renderings prepared by Laura Staines Giardino AIA, PP of L&M Design LLC;

A-5. certification letter from Stuart D. Appel, FASLA, PP;

A-6. curriculum vitae of Laura Staines Giardino AIA PP LEED AP;

A-7. Decision of the Zoning Hearing Board at Appeal No. 3081;

A-8. curriculum vitae of Joseph J. DeSantis, P.E., PTOE;

A-9. Traffic Impact Study for Ashbourne Country Club;

A-10. Review letter prepared by F. Tavani and Associates, Inc. and dated April 26, 2010;

A-11. Response to Comments letter prepared by McMahon Transportation Engineers and Planners and dated May 25, 2010;

A-12. letter from F. Tavani and Associates to David Kraynik, dated May 28, 2010;

A-13.1 – 13.4. Revised illustrative sections for Ashbourne Country Club prepared by WellsAppell;

A-14. curriculum vitae of Mark Mayhew, P.E.;

A-15.1 – 15.10. series of plans for Ashbourne County Club prepared by Taylor Wiseman & Taylor and dated March 25, 2010;

A-16.1 – 16.24. booklet of reduced and color rendered plans prepared by Taylor Wiseman & Taylor;

A-17. letter from Mark S. Mayhew, P.E. to David M. Lynch, PE, PLS dated July 6, 2010;

A-18.1 – 18,23. memorandum from David M. Lynch, P.E., P.L.S. to the Zoning Hearing Board and dated July 26, 2010;

A-19.1 – 19.5. plans depicting steep slopes prepared by Taylor Wiseman & Taylor and dated September 2, 2010;

A-20. curriculum vitae of Erick W. Hetzel, AICP, LEED AP;

A-21. Fiscal Impact Analysis for Ashbourne Country Club Residential Development prepared by Glackin Thomas Panzak and dated March 25, 2010;

A-22. supplement to Fiscal Impact Analysis;

A-23. Soil Erosion and Sediment Control Plan dated October 5, 2010;

A-24. Exhibit A-23 in reduced version;

A-25. Cross Section Plans last revised October 5, 2010 and consisting of 10 sheets;

A-26. Lines and Grades Plan;

A-27. LEED for Home Checklist;

A-28.1 – 28.5. photographs of sample materials board

A-29. 30 year Limited Warranty for Hardiplank Board;

A-30. Proposed Finding of Fact, Conclusions of law and Memorandum of Law submitted by Matrix Ashbourne Associates, L.P.;

P-1. letter from David M. Lynch P.E., P.L.S. to Mark S. Mayhew, P.E. dated July 21, 2010;

P-2. curriculum vitae of John O. Chambers, Jr., P.E., R.S.;

P-3. "Roads and Streets, Shallow Excavations, and Lawns and Landscaping" for Montgomery County identifying Ashbourne County Club from the Natural Resources Conservation Service and dated July 22, 2010;

P-4. Stormwater Concept Plan for Ashbourne County Club prepared by Taylor Wiseman & Taylor and annotated by John Chambers;

P-5. letter from David C. Onorato to ZHB Solicitor dated November 3, 2010, in support of objection to several of applicants' exhibits; and

P-6. Proposed Findings of Fact, Conclusions of law and Brief of Protestants submitted by CC4A;

5. Peter Friedman, Esquire, represented Matrix throughout the hearings.

6. CC4A is an unincorporated association of individuals which, along with certain named individual members, objected to the Application and participated in the hearings, Matrix having stipulated to the standing of CC4A and certain members as protestants (hereafter, "objectors"). David C. Onorato, Esquire, represented objectors throughout the hearings.

7. The Property includes approximately 104 acres bordered in part by Ashbourne Road, Jenkintown Road and Tookany Creek Parkway.

8. The Property was previously used for a golf course, clubhouse and additional accessory buildings and amenities. The Property's pre-golf course topography was substantially altered by construction and re-grading for the golf course, clubhouse and other features of the golf course.

9. Matrix proposes to develop the Property for an age-restricted community with 70 single-family detached homes and 156 attached single-family homes (clustered in groups of three) (the "Project"). The project includes a central clubhouse and swimming pool. Of the 104 available acres that make up the Property, Matrix proposes to leave approximately 67 acres as open space.

10. The central clubhouse with common areas, meeting rooms, indoor and outdoor recreation amenities and swimming pool is a use customarily incidental to an age-restricted residential community. The Project provides adequate parking for the clubhouse, swimming pool and meeting rooms.

11. In Matrix's design of the Project, of the homes that have frontage along Ashbourne Road, four (numbered 67, 68, 69 and 70 on Applicant's Exhibit A-1, the Amended Zoning Plan) face Ashbourne Road (South) with a rear elevation.

12. In the existing scheme of development along Ashbourne Road and, with few exceptions, throughout Cheltenham Township, the principal public street frontage is addressed by a home's front or side elevation. Matrix's planning expert, Appel, admitted that he was unaware of any existing home in the surrounding developed neighborhoods where the rear of a home faced the street.

13. Mr. Appel testified that the parking requirements in the Age-Restricted Overlay District did not anticipate an age-restricted development of single-family homes. Mr. Appel noted that mention is made of parking lots and the prohibition of parking between a

building and a public street. Mr. Appel testified that the ordinance is premised upon the ability to share parking spaces in a parking lot for multi-family units. There, requiring 1.5 spaces per dwelling is easily accomplished in parking lots where all spaces are open to all residences. In this project, Mr. Appel notes that parking spaces are in driveways which are not available to neighbors.

14. Construction of dwellings with the rear elevation facing the principal public street is contrary to the public interest.

15. The Project includes internal walkways linking the residential areas with the clubhouse and also features public trails through the Property.

16. Age-restricted communities were permitted as a special exception in an R-1 Residence District at the time Matrix submitted its application in accordance with the Age-Restricted Overlay District.

17. The proposed community will be ultimately maintained by a homeowners' association, which will be responsible for maintenance of the access ways, grounds, internal lighting, snow and ice removal, trash collection and, specifically, maintenance of the approximately 67 acres of open space.

18. The Board qualified Stuart Appel as an expert landscape architect and planner. The Board relied, in part, upon Mr. Appel's testimony.

19. Matrix designed the Project to have a principal access at the signalized intersection of Ashbourne and Oak Lane Roads, the current entrance to the country club. Matrix proposes a second egress along Ashbourne Road East (Ashbourne Road turns from a north/south road to an east/west road at the intersection of Ashbourne Road and Oak Lane Road).

20. A network of interior roads provides access within the Project to each of the proposed single-family dwellings, common areas and the clubhouse.

21. Each single-family dwelling will have a two-car garage as well as a driveway that will accommodate two (2) parking spaces. Each residence is set back from the property lines by no less than 122 feet.

22. Matrix proposes best management practices for the treatment of stormwater. Proposed are bio-infiltration swales, water quality basins, and bio infiltration basins which Matrix represents as exceeding the standard for water quality treatment established by the Department of Environmental Protection.

23. Matrix proposes to restore 37 of the 67 acres of open space to natural woodland and meadows.

24. The design and layout of the residences on the property results in a dwelling density of 2.2 per acre, a density which is lower than the density of the surrounding existing residential neighborhoods.

25. Matrix intends the residences to be for sale and not for rent. Purchasers will be limited to those 55 years of age or over.

26. Mr. Appel testified that the proposed age-restricted development will have no adverse effects to the public interests and will be in accordance with the Cheltenham Township Comprehensive Plan. The Comprehensive Plan encourages the development of age-restricted communities.

27. The building coverage for the Project is proposed to be 13.6 acres or approximately 13% of the Property.

28. All buildings are proposed to be set apart by no less than 30 feet.

29. Mr. Appel testified that the proposed lighting and landscaping will comply with the applicable zoning code requirements.

30. The controls governing trash removal and loading areas apply only to the clubhouse, and Mr. Appel testified that the Project is code compliant with regard to those controls.

31. Matrix proposes 116 parking spaces within the rain garden areas, a number which Mr. Appel testified was reasonable and customary for an age-restricted development.

32. Each single-family residence in the Project will have a two-car garage and a driveway that can accommodate two passenger cars.

33. Matrix's architect testified that purchasers of single-family dwellings will have a choice between one-car and two-car garages. However, this testimony is contrary to the testimony of other Matrix witnesses and representations.

34. Article XXIX, Section 295-221(F) limits the maximum number of parking spaces to "[n]o more than 120% of the required minimum parking . . ."

35. Article XXIII, Section 295-245(c)(1) requires, in part, 1.5 parking spaces for each dwelling unit. The Project, as approved and conditioned hereafter, meets the minimum requirements for parking.

36. The Project includes private roadways of 24 feet in width instead of roads of 28 feet in width. Parking is not permitted on roads less than 28 feet in width. The result is an absence of parking along the roadways. Instead, Matrix proposes parking fields that are partially obscured in the landscape and located in rain gardens.

37. Mr. Appel admitted that no home located on Ashbourne Road in the vicinity of the Project does not have the front of the residence face Ashbourne Road. Mr. Appel further agreed that four single-family homes in the Project nearest to Ashbourne Road South face inward toward the central portion of the Project, and Matrix has located the rear of these

residences toward Asbourne Road South. Accordingly, the rear yards of the four residences are uniquely located between the buildings and Ashbourne Road South.

38. The Board qualified Laura Staines Giardino, AIA PP LEED AP, as an expert in architecture. The Board relied, in part, upon the testimony of Ms. Giardino.

39. Matrix engaged Ms. Giardino to perform architectural services related to the proposed development. Ms. Giardino visited the site and the surrounding neighborhoods, noting, observing and measuring the scale of the neighborhoods, various differences and similarities in the homes surrounding the Property.

40. Ms. Giardino testified that the project team considered the consistency of materials and variations in housing stock in the neighborhoods in arriving at the materials proposed for the Project. Accordingly, Matrix decided on variations in the architecture and in the materials used in the proposed residences.

41. Ms. Giardino testified that the materials proposed for the Project and for the clubhouse are largely sustainable with color choices sympathetic to the neighboring communities.

42. Matrix located the clubhouse and swimming pool at the Property to be centrally located for the benefit of the residents, maintaining a reasonable walking distance from the residences.

43. Ms. Giardino testified that Matrix's choice of materials, placement of windows and doors and architectural design represented a coordinated and unified approach to the development of the Project, which was architecturally in keeping with the surrounding neighborhood.

44. At the hearings, Matrix presented materials representative of those actually to be used in construction of the Project. In addition, Matrix prepared and exhibited a number of color renderings of the proposed Project. Matrix's representatives confirmed that the materials as presented to the Zoning Hearing board are the same materials and color schemes that will be used in the construction of all of the residences.

45. Matrix's proposed entranceways are designed to provide residents and visitors with protections from adverse weather conditions.

46. The Matrix design for the project contains no blank or windowless walls.

47. Various plans for the Project illustrate a network of internal walkways as well as walking trails within the open space. Other outdoor amenities include the clubhouse, swimming pool, rain gardens and outdoor seating at the rain gardens. Each unit, in addition, has a private garden and patio or terrace area.

48. Matrix does not intend to register the Project for LEED certification.

49. Matrix intends to investigate the use of sustainable materials that approach the goals embodied in the LEED certification program and to implement sustainable practices in the construction of the Project.

50. The Board qualified Joseph J. DeSantis as an expert in traffic engineering. The Board relied, in part, upon DeSantis' testimony.

51. DeSantis prepared a traffic impact analysis for the Project. In preparation of the analysis, DeSantis surveyed seven intersections in the community surrounding the Project. DeSantis also developed a trip generation study in order to anticipate the traffic expected to be generated by the Project, which study DeSantis stated was the key to the traffic impact analysis.

52. DeSantis testified that his study was based in part upon statistics derived from data published by the Institute of Traffic Engineers. At morning peak hours, DeSantis said that traffic generated would account for 71 trips entering and exiting the Project. At afternoon peak hours, the Project would generate 87 trips entering and exiting. DeSantis concluded that the traffic generated by the proposed age-restricted development would not be significant.

53. DeSantis also concluded that the traffic impact on individual roadways would be *de minimis*. To the extent that new traffic will impact two intersections, however, DeSantis recommended off-site traffic improvements to ameliorate the impacts at these intersections as well as other actions to improve traffic elsewhere.

54. DeSantis computed the number of required parking spaces for the proposed 226 single-family units to be 339 parking spaces based on a requirement of 1.5 parking space for each dwelling unit. DeSantis computed the zoning code requirement of an additional one parking space for each five dwelling units to add an additional 46 parking spaces. DeSantis added one additional parking space to meet the requirement of one parking space for each full time employee. DeSantis calculated the total required spaces to be 386 parking spaces.

55. Pursuant to the Article XXIX, Section 295-221(F), the maximum number of parking spaces permitted at the Project is 120% of the required parking spaces.

56. DeSantis computed the total number of permitted parking spaces for the Project under Section 295-221(F) to be 442 parking spaces.

57. Matrix proposed 568 parking spaces for the Project.

58. DeSantis offered his opinion that the zoning code's limitation of 120% or 56 additional parking spaces for a total of 442 parking spaces at the Project was not reasonable. DeSantis testified that, in his experience, maximum parking limitations were appropriate for large apartment complex where parking was limited to a large parking lot, given to large expanses of impervious asphalt and excess stormwater run-off leading to environmental issues.

59. Notwithstanding DeSantis' considerable expertise, the Board did not find DeSantis' testimony credible on the maximum parking issue because it was premised on the statement that two-car garages are standard. The statement has no basis in the testimony and was contradicted by common experience and by Giardino's photographs (Exhibit A-4) of residences

in the community which contain no two car garages, numerous one-car garages and several homes with no garages.

60. DeSantis noted that the streets interior to the Project and servicing the carriage homes are "only 24 feet wide," and that the Fire Marshall and DeSantis would recommend against street parking. DeSantis further testified that the proposed 116 guest parking spaces, laid out in groups of five or seven, would provide convenient, close and accessible parking.

61. DeSantis admitted that, where roads are proposed to be 28 feet wide, on-street parking would be available, although he stated that on-street parking would not be advisable.

62. DeSantis also testified that large portions of the development were not provided with guest parking in designated off-street lots. Accordingly, some dwellings do not have close, convenient and accessible guest parking nearby. However, as DeSantis stated, these areas are serviced by streets with widths of 28 feet, allowing on-street parking nearby.

63. If the Project had been designed entirely with roadways of 28 feet in width, on-site parallel parking could be provided on these streets, and such parking would be convenient and nearby for the residents and their guests.

64. DeSantis testified that on-street parking on streets measuring 28 feet wide was common and, in fact, allowed parking on both sides of a street. Given DeSantis' estimate of the density of parking in this Project, he stated that there would be rows of parking on both sides. Parking would be sporadic, but that was the typical workings for a residential street.

65. DeSantis did not consider that the configuration of the Project would allow two cars to be parked in each garage and two cars could be parked in each driveway in making his conclusion about the sufficiency of guest parking.

66. Any deficiency in guest parking represents Matrix's preference and results solely from Matrix's choice to develop the Project with dwellings, all of which have two-car garages, unnecessarily broad curb cuts and driveways, an absence of green front lawns, and narrow streets that prevent and discourage on-street parking. To the extent that the deficiency represents a hardship, such condition is self-imposed.

67. DeSantis testified that it would not be reasonable to design an age-restricted development with one-car garages. The Board did not find this testimony to be credible.

68. The Board qualified Mark Mayhew as an expert in civil engineering. The Board relied, in part, upon the testimony of Mr. Mayhew. Mr. Mayhew and his colleagues at Taylor, Wiseman & Taylor prepared the civil engineering drawings accepted by the Board as Exhibits A-15.1 through A-15.10. Mayhew also prepared an Amended Zoning Plan, included in Exhibit A-1, and a power point presentation, accepted as Exhibit A-16.1 through A-16.10.

69. Mayhew analyzed the areas designated as having steep slopes which are planned to be disturbed in the course of developing the Property for the Project in order to arrive at an opinion as to which areas were man-made and which areas are naturally occurring.

70. Mayhew studied the topography, soils, vegetation and historic photographs and excavated nine test pits in order to identify areas designated as having steep slopes that he considered to have been man-made steep slopes. Based on his analysis, Mayhew testified that much of the areas proposed to be disturbed that were steep slopes were man-made, likely having been created when the golf course was built in the 1920's and, thereafter, as a result of improvements.

71. Mayhew determined the amount of naturally occurring steep slopes amounts to be 0.11 acres or 0.1 percent of the total site area, an amount which Mayhew considered to be an insignificant disturbance.

72. Mayhew acknowledged that the Township zoning ordinances do not distinguish between naturally occurring and man-made slope.

73. Mayhew calculated that the Property has 14.4 acres of man-made steep slopes and that 10.7 acres or 74% of the man-made steep slopes will be disturbed by the proposed construction.

74. Mayhew testified that the proposed grading of areas of steep slopes is required to construct the residences, provide safe grading around residences and roadways and to provide proper stormwater management.

75. With a single exception (only one residence requires disturbance of non-man-made steep slopes), the disturbances are to man-made steep slopes.

76. Mayhew testified that all of the disturbances proposed for steep slopes can be accomplished in a safe manner and that the protections provided by the Cheltenham Township Subdivision and Land Development Ordinance and the Montgomery County Conservation District will ensure that the disturbances are completed in a safe manner.

77. Mayhew testified that the disturbances of areas designated as having steep slopes would result in no negative impact to downstream water courses, no increase in erosion of slopes, no stream siltation, and no soil failure. Mayhew concluded, therefore, that Matrix had met the requirements of Section 295-164(B)(2) to allow the Township Engineer to exempt the Project from the application of the provisions of the Steep Slope Conservation District.

78. The Township Engineer declined to exempt the Project from application of the provisions of the Steep Slope Conservation District, a determination that the Board will not disturb.

79. A substantial portion of the areas designated as having steep slopes at the Property were a result of the construction of the golf course which operated at the Property for more than 80 years. The construction that resulted in the steep slopes included the terracing and creation of the golf course itself, the construction of the clubhouse and auxiliary building and the

parking lots. The resulting steep slopes are not environmentally sensitive areas, which term is directed toward native and naturally occurring physical conditions. Nevertheless, the ordinances are designed to insure that disturbances of any steep slope on the Property be performed in such a manner as to safeguard the surrounding area and to avoid negative impact to downstream watercourses, increases in soil erosion, stream siltation and soil failures.

80. Confining the Project's development to areas which are not designated as having steep slopes would result in severe limitations on reasonable development and result in haphazard design contrary to the public interest.

81. The Project may be developed in an manner that protects the community and Property from injurious slope erosion, soil failure, stream siltation or increase in stormwater discharge and collection notwithstanding widespread disturbances of areas designated as having steep slopes. Matrix submitted an Erosion and Sediment Control Plan, which plan or an alternative must be approved by the Board of Commissioners in the land development approval process.

82. Sixty-four percent of the Property will remain as open space after the Project is completed. Thirty-six percent of the site will be developed with dwelling units, a clubhouse, and roadways.

83. Due to the construction of the golf course and its amenities, the Property, with regard to steep slopes, suffers from unique topographical conditions resulting in hardship to the Property.

84. Development of the Project will not result in disturbances to floodplains, wetlands, water courses and riparian buffers.

85. Areas designated as having steep slopes which are either naturally occurring or man-made and which are not otherwise located in the floodplain, wetlands, water bodies and watercourses and riparian buffers equal 25.69 acres.

86. While Matrix did not compute the amount of steep slopes to be disturbed, all of the areas of disturbance are accurately illustrated on the submitted plans.

87. Reasonable development of the Property cannot occur without relief from the provisions of the Steep Slope Conversation District and the minimum Net Developable Site Area requirement of the Age-Restricted Overlay District.

88. Matrix submitted with its Application a lines and grades plan, which, in Mayhew's opinion, substantially met the requirements of the Zoning Code at Section 295-168(B). Given the large size of the tract, the complexities in completing a lines and grades plan and the many requirements, Mayhew admitted that the lines and grades plans failed to illustrate certain required elements but further concluded that Matrix's submission met the intent of the Zoning Code.

89. The initially submitted lines and grades plan failed to provide topographical contours at two-foot intervals, having provided four-foot intervals. Subsequently, Mayhew provided a plan with topographical contours at two-foot intervals.

90. Mayhew testified that nothing was lost by not providing the additional contours to the lines and grading plans.

91. The submitted plans failed to illustrate elevations for the top of a foundation walls, basement floors, garage floors and first floors.

92. The information from which these elevations could be determined and/or calculated was available in other forms in the submissions to the Township Engineer.

93. The submitted plans initially failed to illustrate the erosion and sediment ("E&S") control plan.

94. While Mayhew testified that it was too early in the development of the Project to establish the elevations and the E&S control plan and that those would be provided fully in the land development approval process, Matrix and Mayhew ultimately submitted an E&S control plan.

95. Objectors' attorney Onorato voiced an objection to the introduction of an E&S plan, claiming it was an amendment to the original application as it was a required submission. The Board did not agree with objectors and allowed the introduction of the new plan.

96. Mayhew disputed the assertion that the E&S Control Plan was needed on the Lines and Grades Plan in order to determine whether development at the Property would have an adverse impact. Nevertheless, when Mayhew finally prepared and submitted an E&S Control Plan, Mayhew testified that it illustrated measures that Matrix would take to minimize erosion and sediment runoff.

97. Mayhew had originally stated that the absence in the plans of a differentiation in soil types would not hamper the Board's ability to review the Project for adverse effect because differences in soil types can be accounted for by E&S measures including the use of different types of silt fence and other measures. Mayhew represented that Matrix had committed to using "super silt fence," diversion swales and other protective measures during the construction period. The subsequent submission of an E&S Control Plan included a designation of soil types at the Property.

98. An existing terra cotta sewer pipe runs through an area identified as flood plain and riparian corridor. The pipe runs between two manholes, one of which is near a bank of the Tookany Creek. While Matrix proposes no work to this pipe in this Application, Matrix has committed to inspecting the pipe at the suggestion of the Township Engineer. In the event that the pipe fails the inspection in the opinion of the Township Engineer, Matrix has agreed to replace the existing pipe with a PVC pipe in exactly the same place as is located the existing pipe. This pipe replacement would require a variance to allow disturbances in the floodplain and stream bank and to assure restoration of both upon completion of the pipe replacement.

99. Replacing the existing pipe will require disturbing the riparian buffer for a distance of 60 to 70 feet, and the area will be restored to its natural pre-existing condition. It is not possible to replace the pipe without the identified disturbances in the floodplain and riparian buffer.

100. In Mayhew's opinion, the proposed pipe replacement is ordinary maintenance and repair that should not require zoning relief, although Mayhew conceded that new construction in the floodplain and stream bank would require variances. Nevertheless, Matrix concedes that it may require a variance in order to re-construct the sanitary sewer pipe in the floodplain.

101. Failure to grant a variance to allow replacement of the sewer pipe if the pipe should fail would result in failure of sanitary sewer drainage system in the central portion of the Project. In order to avoid use of the existing pipe or its replacement, the drainage would have to be relocated elsewhere, resulting in extensive and additional disturbances of steep slopes including excessively steep trenching to accommodate the topography.

102. The area to be developed for each single-family detached home will contain areas designated as having steep slopes. The area to be developed in connection with each building housing three single-family homes will contain areas designated as having steep slopes.

103. Mayhew calculated that the Property includes 14.4 acres of man-made steep slopes, of which 10.7 acres would be developed pursuant to the Project.

104. Mayhew testified that four units facing Ashbourne Road (South) could not be oriented to face Ashbourne Road because they featured walk-out basements, a standard product for builders. Mayhew further testified that the residences could not be re-oriented without also adding roadway.

105. There are no topographical or other unique physical features to the Property which prevent Matrix from designing and developing Ashbourne Road facing units where the rear-facing dwelling are currently proposed at Ashbourne Road (South). No adverse effect to the community would result from additional roadway to accommodate this orientation to Ashbourne Road (South) even if required.

106. The Board qualified Erik Hetzel as an expert in fiscal and community impact studies.

107. Hetzel prepared a fiscal impact statement that states the net annual fiscal impact of the Project comparing municipal revenues to costs, premised upon annual revenues and costs (excluding transfer taxes) to Cheltenham Township and the Cheltenham Township School District. Hetzel concluded that, upon completion and sale of the units in the Project, the Township would experience positive revenue (excess over costs) of \$203,467. The School District would have annual positive revenues of \$1.76 million.

108. Hetzel's analysis is premised upon age-restricted sales, presumed market values of the dwellings and estimates of earned income of anticipated residents. Hetzel's opinions are also based upon the Project being fully completed and each dwelling being sold.

109. In addition, based upon Matrix's anticipated sales prices, Hetzel stated that the Township and the School District will realize revenues generated from transfer taxes on the sale of dwelling units at the Property. Each would receive \$580,000 from the transfer taxes collected on the initial sale of all of the Project's dwelling units. Hetzel stated that the municipal entities could anticipate additional revenue from the yearly turnover of properties that could result in \$28,890 in additional transfer tax revenues, based on a 7.4% turnover of homes in the Project.

110. The Board qualified, David M. Lynch, the Township's director of Engineering, Zoning and Inspections (the Township's Code Officer) as an expert in civil engineering.

111. In reviewing the Project, Lynch developed a measuring scheme to assess the impacts to receiving water bodies of development in steep slopes. Lynch developed the scheme at the direction of the Board of Commissioners' Building and Zoning Committee for its use in reporting the Project's possible zoning and engineering impacts to the Zoning Hearing Board. Lynch determined that any disturbances to an area designated as having a steep slope would necessarily have a zoning impact. In a report to the Board utilizing this measuring technique, Lynch advised the Board that none of the impacts was *de minimis*. Lynch distinguished a zoning impact from an engineering impact, stating that there could be a zoning impact under the governing provisions and not have an engineering impact. Lynch admitted that his "grading system" was not a standard engineering practice and was developed solely to evaluate Matrix' plan of development.

112. Lynch's Level I engineering impacts included areas with slopes less than 15% and small isolated areas with slopes in excess of 15% or 25% so long as the area does not involve an area of drainage to a waterway. Level I engineering impacts are of little concern and include areas not governed by the regulations for a Steep Slope Conversation District.

113. Level 2 engineering concerns included small, isolated areas of steep slopes in a drainage way and areas of "mass" slopes of 15% to 25% and are, to Lynch, of more severe engineering concern. Disturbances in these areas require remediation to avoid erosion into the drainage areas and waterways.

114. Level 3 engineering impacts includes area within stream banks, riparian buffers, floodplains and mass steep slopes of greater than 25%. Level 3 areas represent potential for more severe impacts.

115. In accordance with his three level engineering analysis, Lynch testified that 168 homes – either single-family or clustered – have no or Level 1 engineering impact. Matrix could build these 168 homes with either no or Level 1 engineering impact. However, Lynch testified that development of these 168 homes would likely not avoid Level 2 or Level 3

impacts to areas designated as having steep slopes due to the additional construction involved beyond the homes (i.e. roadways, etc.).

116. Lynch testified that the greater the number of houses developed, the greater the potential impact on steep slopes and the greater impact, in turn, requires a greater need to mitigate construction's impact on steep slopes.

117. All of the engineering impacts can be adequately addressed by erosion and sediment control measures.

118. Development of land disturbs the natural environment. The steeper the grading of land, the higher the risk of environmental damage. The purpose of the Steep Slope Conservation District is to prevent and avoid soil erosion.

119. The Board qualified John O. Chambers as an expert in civil engineering.

120. Chambers testified that certain soil types present a higher risk of erosion and are less suited for construction, and Chambers identified those soils as they exist on a plan of the Project. Chambers further identified specific lots, at which the soil types having a higher risk of erosion were located. Chambers identified 77 of the proposed dwellings as located on severely limited soils.

121. Chambers testified that the Project will effect steep slopes, will have a negative impact on steep lopes, will have a potential negative impact on the environment when compared with no development.

122. Chambers' opinion was that the Project could be developed without significant impact on steep slopes by not building on steep slopes which could be accomplished by building fewer dwelling units.

123. Chambers opined that the Project was not consistent with the legislative intent of the Steep Slope Conservation District provisions because the Project proposed inappropriate development and excessive grading resulting in an inharmonious element in the development of the Township.

124. Chambers agreed that erosion and sediment control measures can be used to control runoff where development is proposed for steep slopes.

125. Chambers agreed with Matrix's counsel that the risks involved with development in some soil conditions where risk relates to frost action can be addressed with proper design and construction of the Project.

#### **DISCUSSION**

Applicant Matrix Ashbourne Associates, L.P. is the owner of the premises known at 1100 Ashbourne Road in Elkins Park, Pennsylvania. The Property, containing approximately

104 acres, was previously the site of the Ashbourne Country Club. Ashbourne Country Club was originally developed between 1922 and 1924 and operated, for the most part, as a private club. Matrix and related companies had substantial experience operating golf clubs and began to operate Ashbourne Country Club in or about 1995. In 1999, Matrix purchased the Property and continued to operate the club until 2005, at which time Matrix determined that the operation of the Property as a golf and country club was no longer viable.

In an earlier application at Appeal No. 3081, Matrix sought and obtained zoning relief from the Zoning Hearing Board to construct a residential development consisting of three mid-rise residential apartment and condominium buildings with 300 dwelling units and a golf course with accessory clubhouse and buildings. Matrix did not build that project, and the zoning relief has since expired.

Now Matrix proposes to develop the Property for 226 single-family residences, configured as 70 detached single-family homes and 156 single-family attached dwellings arranged in groups of three (the "Carriage Homes"). The Project will also include a community clubhouse with meeting rooms and other amenities and a swimming pool. Of the site's approximate 104 acres, Matrix proposes to keep 67 acres as open space, 37 acres of that space preserved or returned to natural conditions. The Project features a number of walkways, trails, parking areas and stormwater management facilities beneficial to the public interest.

Although the underlying zoning district is an R-1 Residence District, development of the Property is subject to a number of overlay districts including the Age-Restricted Overlay District, the Preservation Overlay District and the Steep Slopes Conservation District. Matrix seeks to develop the property utilizing the provisions available under the Age-Restricted Overlay District. Although subsequently repealed by the Cheltenham Township Board of

Commissioners, Matrix made its application at a time when those provisions were available and continues to pursue the project under the Age-Restricted Overlay provisions.

Matrix designed the Project substantially to conform with the governing zoning controls, but the Project requires special exceptions in accordance with the Age-Restricted Overlay District and variances from the Steep Slope Conservation District, the General Provisions regulating parking, the Preservation Overlay District and the Age-restricted Overlay District. The Board conducted a number of evidentiary hearings, giving almost unlimited time to both Matrix and objectors. Following the submission of briefs and consideration of the record in this matter, the Board granted Matrix most of the requested relief.

Critical to the Project is Matrix's request for special exceptions in accordance with the provisions of the Age-Restricted Overlay to permit an age-restricted, independent living, multiple dwelling development (Section 295-242(B)(1)), a clubhouse with common areas, meeting rooms, indoor and outdoor recreational facilities as well as maintenance and security facilities (Section 295-242(B)(3)), and a swimming pool for residents (Section 295-242(B)(3)). In order to be eligible for the application of the Age-Restricted Overlay, the Project must contain an area of 5 acres or greater in single ownership, be located in a residential, institutional or commercial zoning district and have the necessary frontage on a state road. Here, the Property contains 104 acres owned in single ownership, is located in an R-1 Residential district and enjoys 3,000 feet of frontage on a state road; the Property is, therefore, eligible for application of the Age-Restricted Overlay provisions. See Section 295-241.

Accordingly, since the proposed uses are permitted by special exception and since the Property is eligible for Age-Restricted Overlay treatment, the Board may grant special exceptions to the proposed uses so long as the application meets specific criteria of the

ordinances -- the Performance Standards (Section 295-244) and the Development requirements. The plans of record demonstrate that the Project meets the Performance Standards. The plans of record and the testimony of Matrix's experts establish that the Project meets the Development Requirements.

Section 295-209(A)(2) requires that the Project must not be contrary to the public interest. In Matrix's design, four homes have a rear elevation facing Ashbourne Road (South). The Board concludes that this disrupts the housing pattern in this neighborhood and, therefore, adversely affects the community. The Board concludes that the design can be altered to avoid this result. Accordingly, the Board attaches hereafter a condition that no building in the Project shall have a rear elevation facing Ashbourne Road.

The Board has made its decisions and conclusions based on the plans and representations made by Matrix and its representatives throughout the hearings. The Board's decision that the Project results in no adverse effect to the public interest rests squarely on the entire presentation at the hearings. Hereafter, the Board attaches several conditions to ensure that the Project is developed as presented. So the Board holds Matrix to its promise to provide three bus shelters, to plant 75% of new trees with a 4"-5" DBH at time of planting and that the land to be preserved and returned to a natural state is addressed simultaneously with the first stage of development. With regard to this last condition, the Board notes that the benefits to the community and to Project's residents stem from 37 acres being preserved and returned to its natural condition and not from fewer. Having provided for these and other conditions, the Board concludes that the Project is entitled to special exceptions for the principal and accessory uses.

The bulk of the requested variance relief centers around the prohibition of development in areas designated as having steep slopes, the floodplain and the riparian buffer as

protected by the Steep Slope Conservation District and the Age-Restricted Overlay. Since the Property was last developed for a golf course and golf club principal and accessory buildings, there are numerous areas throughout the Property which qualify as steep slopes and to which the regulations of the Steep Slope Conservation District apply. The Township Engineer included all of the areas designated as having steep slopes -- whether naturally occurring or the result of development -- within the Property's Steep Slope Conservation District. Matrix seeks to have the Board disregard the Township Engineer's determination in delineating the scope of the areas within the Steep Slope Conservation District.

The governing ordinance, Section 295-164(B)(2), empowers the Township Engineer to exempt man-made slopes where he determines the following:

the alteration, regrading, clearing or construction upon such slope can be accomplished without causing erosion of the slope and will not result in soil failure, stream siltation and contamination of surface waters and/or an increase in total runoff into any watercourse . . . and will not be injurious to the [public] health, safety and welfare . . .

The Township Engineer declined to do so. In addition, the Township Engineer made a careful study of the property and determined that all of the elements of the development resulted in zoning impacts and a substantial portion of the development would result in engineering impacts.

Although Matrix offered expert testimony urging a different finding with regard to the development, the Board considered credible the testimony of the Township Engineer and finds nothing persuasive in the record to discard the opinions and determinations of the Township Engineer that man-made steep slopes occurring on the Property should not be disregarded. The Board cannot conclude that development without compliance with protective ordinances will not be adverse to the public interest and specifically notes that, had the Board of Commissioners determined that development in man-made steep slopes would not have the same impact as development in naturally occurring steep slopes, it would have so distinguished such

slopes in the ordinances. Therefore, the Board denies Matrix's request for a determination contrary to that of the Township Engineer.

Alternatively, Matrix sought a variance from the prohibition of Section 295-167 to allow the construction of the Project that disturbs steep slopes. Given the pervasiveness of the steep slopes throughout the Property and the development in the circumstances of the Property, reasonable development is not possible without the disturbance of steep slopes. Disturbances are unavoidable, and the Property would suffer an unnecessary hardship without variance relief.

The Board concludes that any adverse effect inherent in steep slope disturbances can be mitigated if not avoided. The Board notes that objectors' expert testified that proper erosion and sediment controls along with proper design and appropriate construction measures can address the risks and avoid adverse effects. To the extent that proper erosion and sediment controls proposed in Matrix's plans and further designed in the land development approval process do not sufficiently protect the public interest, the Board attaches hereto several conditions as appropriate safeguards to the public interest. The Board conditions relief granted in this decision on Matrix's completion of a Geotechnical Investigation and Analysis as well as an enhanced foundation requirement designed to prevent deterioration of foundations over an extended time period.

The Board further concludes that these measures taken in concert with those implicit in the erosion and sediment control plan, the design of stormwater features, the protections provided in the land development approval process and the general conservation-friendly design result in a plan of development that requires the minimum relief necessary to accommodate reasonable development. As the topographical conditions were not of Matrix's making, Matrix is entitled to a variance from the steep slope provisions in order to construct the

Project and disturb areas designated as having steep slopes. A variance is similarly warranted from Section 295-243(B)(8)(d), a companion to Section 295-167.

The Property has a terra cotta sanitary sewer line that runs toward a manhole in Tookany Creek Parkway public area. The condition of the pipe is uncertain, and the Township Engineer suspects that the pipe will need to be replaced in the event that Matrix connects a portion of its sanitary system to this pipe. Matrix had agreed to replace the pipe with a modern plastic pipeline and to restore the floodplain and riparian bugger upon completion of the work. The pipe, however, lies in the floodplain and the Project's riparian buffer. Matrix, therefore, may require variances from Sections 295-156 (prohibiting certain construction in the floodplain), Section 295-243-242(B)(8)(a) ((excluding floodplain areas from the Net Developable Site Area (NDSA) of an age-restricted development)), and 295-243(B)(8)(e) (excluding riparian buffers from the NDSA). Developing an alternative course for the pipe represents the kind of waste that appellate court decisions do not favor. The Board concludes that a failure to grant a variance to allow the replacement of the pipe would result in an unnecessary hardship. The requested relief is the minimum relief that will afford Matrix relief, will not result in any adverse affect to the public interest and, indeed, will protect the pubic interest by mitigating a failing system through a minimally, and only temporary, invasive process.

In addition, Matrix notes that, while it has not designed its sanitary sewer system to be located in any portion of the floodplain, the final location and design of the sanitary sewer system will be part of the land development process subject to the approval of the Board of Commissioners. Matrix seeks approval to locate portions of its sanitary sewer systems in the floodplain (and to restore the floodplain upon completion of the work) if that is the result of the land development process. Since development of the Project is dependent upon this land

development approval, a failure to grant relief to allow placement of a portion of the sanitary sewer system in the floodplain where such is required by the Board of Commissioners and the application of the land development ordinances would result in an unnecessary hardship. The hardship, a product of the land development process, would not be self-created and will not result in any adverse affect to the public interest. Accordingly, a variance from Section 295-253(B)(8)(a) is warranted.

Matrix submitted a Lines and Grades Plan that was deficient in several respects when measured against the requirements of the Age-Restricted Overlay. During the course of the hearings, Matrix submitted revised plans that complied with more sections of the ordinance. Matrix admits, however, that the Lines and Grades Plan, composed of several sheets of plans, still do not meet all of the technical requirements of the ordinances because the plans do not include information about off-site structures and certain on-site measurements. Accordingly, the Board cannot agree to Matrix's request to make a determination that the submitted plans comply with the ordinance.

However, the Lines and Grades Plans do provide the Board with sufficient information in sufficient quantity and detail for the Board to analyze the Plan's content for the purpose of the application of the Age-Restricted Overlay. While not in the category of matters for which the Board may make a *de minimis* finding, the departure is, indeed, minimal. Hereafter, the Board conditions approval on the submission to the Township of a fully compliant Lines and Grade Plan. With this added protection, the Board concludes that the failure to grant a variance from the requirements for Lines and Grades Plans would result in an unnecessary hardship and will not result in any adverse affect to the public interest.

Matrix also seeks an interpretation of Section 295-241 that the provisions of the Preservation Overlay District do not apply to the Project. Section 295-241 provides, in part, that where the provisions of the Age-Restricted Overlay apply, the “provisions of the underlying zoning district shall not apply.” Here, the underlying zoning district is R-1 Residence District. Section 295-187(A) is the pertinent and controlling section of the Preservation Overlay District:

The Preservation Overlay District is defined and established to include and be an overlay upon all parcels having five or more acres or any residential site with a development proposal of eight dwellings units or more within any residential district designated on the Cheltenham Township Zoning Map. All property within the district used or intended to be developed for residential purposes shall comply with the provisions of this article.

The Preservation Overlay District regulations clearly apply to this Property and Project. However, the certain portions of the regulations are contrary to the Age-Restrict Overlay. The Preservation Overlay District controls serve different planning goals than do the Age-Restricted Overlay zoning controls. To require compliance with both the Age-Restricted Overlay District and the Preservation Overlay District would be contrary to the public interest and result in a hardship upon the Property and the Project. Accordingly, the Board concludes that it is empowered and compelled to grant a variance from Sections 295-187, 188 and 189 of the Preservation Overlay District to the extent that district rules might apply to the Project. Since Section 295-190 does not appear to be contrary, the Board declines to grant a variance from this section.

Lastly, Matrix seeks a further determination that the proposed parking spaces do not exceed the maximum number permitted under the Zoning Code’s Section 295-221(F). Section 295-221(F) limits the number of parking spaces that may be provided to 120% of the minimum parking spaces required for the Project. Section 295-245(C)(1) requires 1.5 spaces for each dwelling (339 spaces), one space for each five dwelling units (46 spaces) and one space for

each employee (1 space). The minimum number of required spaces is, therefore, 386. The maximum number of spaces is 463 (i.e. 120% of 386). Matrix proposes to provide 452 parking spaces in the 2-car driveways and 116 parking spaces in common parking fields. Clearly, Matrix's plan exceeds the maximum number of parking spaces by 105 parking spaces.

While Matrix provided expert testimony that the extra parking may be a good amenity for the Project, there is no record evidence that the Project cannot be developed within the regulations and without an excess of 105 parking spaces. Matrix's expert testimony is firmly based on the allegation that two-car garages are standard in age-restricted or similar development. The record demonstrates otherwise. The testimony also discounts or overlooks entirely the availability of two guest parking spaces in the driveways of the each residence.

Matrix's architect testified that she surveyed the surrounding community in order to design the Project to conform with certain architectural styles. She supported her testimony with photographs of a number of nearby properties and dwellings. None have 2-car garages; none of double-width driveways. Some do not have garages. The Board does not find credible Matrix's testimony that the standard for similar developments is a 2-car garage. In addition, Matrix admits that its choice of narrow roadways, measuring 24 feet in width, does not allow for parallel on-street parking. The decision to provide 2-car garages, double-width driveways and narrow internal streets produces the desire, but not the need, for additional parking in parking fields located throughout the Project. If there is a lack of parking available for the development, the lack of parking is self-inflicted.

Section 910.2(a) of the MPC clearly empowers the Board to grant variance only in a matter where the Board can make all of the following findings where relevant:

- (1) That there are unique physical circumstances or conditions, including the irregularity, narrowness, or shallowness of lot size or shape, or exceptional

topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstance or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable reasonable use of the property.

(3) That such unnecessary hardship has not been created by the appellant.

(4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

In order to grant a variance, the Board must be empowered by authority delegated through the MPC. The requirements for a variance are, in this case, clear and bind the Board's discretion. Accordingly, upon the record in this matter, the parking deficiency, if any, is self-inflicted and the Board is without power to grant relief and must deny Matrix's request for variance.

#### CONCLUSIONS OF LAW

1. The proposed age-restricted development is not permitted by the Cheltenham Township Zoning Ordinance without the grant of special exceptions and variances. However, in accordance with the Pennsylvania Municipalities Planning Code and the Cheltenham Zoning Ordinance, the Cheltenham Township Zoning Hearing Board is empowered to hear and decide requests for variances where it is alleged that strict conformance with the governing ordinances would result in unnecessary hardship. Similarly, the Zoning Hearing Board is empowered to grant special exceptions where the application meets the criteria of the zoning ordinances.

2. Matrix proposes to develop an age-restricted residential development comprised of 70 single-family detached homes, 156 single-family multiple dwellings (each with three single-family attached dwellings), a community clubhouse, swimming pool and open space.

3. The community clubhouse, swimming pool and associated amenities are customarily incidental to an age-restricted community.

### SPECIAL EXCEPTIONS

4. Under the circumstances of this matter, Matrix has met its burden in demonstrating that its Project, as described in its Application and supporting documentation, meets the minimum criteria necessary for the application of the Age-Restricted Multiple-Dwelling Overlay District because the Property is greater than 5 acres, the Property is located in an R-1 Residence District and the Property has frontage on a state road that exceeds 2,500 feet. Accordingly, the Project is eligible for Age-Restricted Housing Use.

5. Except as otherwise noted herein, the Project meets the Performance Standards and the Development Requirements of a qualifying age-restricted development.

6. The allowance of a special exception to permit the development of the proposed age-restricted development with the proposed accessory clubhouse, swimming pool and other amenities will not be contrary to the public interest.

7. Construction and operation of the Project will not adversely effect traffic conditions, drainage, air quality, noise levels, natural features of the land, neighborhood property values or neighborhood aesthetic characteristics.

8. Construction and operation of the Project will not adversely effect the provision of public services.

9. Matrix has met its burden in establishing that the Project has met the requirements for the application of the Age-Restricted Overlay District and the Age-Restricted Multiple Dwelling Overlay District, and Matrix is, therefore, entitled to special exceptions pursuant to § 295-242(B)(1) and 242(B)(3) to develop the Project for age-restricted residences and accessory clubhouse, swimming pool and amenities.

### VARIANCES

10. Sections 295-156 and 295-243(B)(8) do not permit construction of sanitary sewer facilities in the 100 Year Floodplain Area or in areas designated as within the riparian buffer.

11. Cheltenham Township may require and Matrix has agreed to replace an existing sanitary sewer line that is located in the 100 Year Floodplain and in the riparian buffer as a condition to constructing the Project.

12. If Matrix is unable, due to the prohibitions in the Zoning Code, to replace the sanitary sewer line, the Property will be subject to an unnecessary hardship which was not created by Matrix.

13. Allowance to replace the sanitary sewer line located in the 100 Year Floodplain and in the riparian buffer and to restore the floodplain and the riparian buffer upon completion of the work is the minimum variance that will provide Matrix with relief and will not adversely affect the public interest.

14. Reasonable construction of a project appropriate for this 104 acre site cannot be completed without the disturbance of numerous areas designated as having steep slopes.

15. The governing Zoning Code regulations, Section 295-167 and, in some respects, Section 294-243(B)(8)(d), do not permit construction of the Project including proposed freestanding structures, building and retaining wall, internal accessways, driveways, parking areas, swimming pool, sanitary sewers, stormwater management facilities and other underground facilities and landscaping in areas designated as having steep slopes.

16. Many of the features prohibited by the steep slope limitations are required by other provisions of the Age-Restricted Overlay District.

17. Allowances from the steep slope limitations to accommodate the development of the Project are reasonable adjustments.

18. The requested variances from the steep slope limitations represent the minimum relief or a reasonable adjustment that will afford relief to Matrix and will result in no adverse affect to the public interest.

19. The Project is designed to restore substantial acreage to a natural state and to avoid development in the floodplain. In the event, however, that, as a result of the land development process, the Board of Commissioners approve a plan of development that place sanitary sewer facilities in the floodplain, a failure to grant a variance to allow such development in the floodplain would result in an unnecessary hardship.

20. Allowance to construct sanitary sewer facilities in the floodplain when required by an approved land development plan will afford Matrix minimum relief and will not result in any adverse effect to the public interest.

21. The submission of a Lines and Grades Plan as required pursuant to Section 295-168 does not meet all of the technical requirements of the ordinance.

22. Matrix's Lines and Grades Plan provides all of the information necessary to address the purposes of a lines and grades plan and provides a satisfactory basis for the Zoning Hearing Board to evaluate the Project with regard to public interest served by the regulations governing Lines and Grades Plans.

23. A variance to allow development of the Project without the submission of a totally compliant Lines and Grades Plan is the minimum variance that will afford Matrix relief and will not result in an adverse effect to the public interest.

24. The Property is subject to the requirements of the Preservation Overlay District, Sections 295-186-190.

25. The Preservation Overlay District is not an underlying zoning district, but is an overlay district.

26. The portions of the Preservation Overlay District applicable to the Project are, in great part, contradictory to the Age-Restricted Overlay District and the Project cannot be complete in compliance with both sets of zoning controls.

27. Imposing both set of controls would result in an unnecessary hardship to the Property.

28. A variance from Sections 295-187, 188 and 189 of the Preservation Overlay District will provide minimum relief to Matrix and will not result in an adverse affect to the public interest.

#### **DENIALS OF REQUESTS FOR RELIEF**

29. The provisions of the Steep Slope Conservation District do not distinguish between man-made and naturally occurring steep slopes in their limitation on certain uses in areas designated as having steep slopes.

30. Matrix failed to present evidence sufficient to demonstrate that the Township Engineer erred in his determination of the boundary of the Step Slope Conservation District at the Property, and, therefore, the Zoning Hearing Board has no authority to set aside the Township Engineer's determination.

31. The required number of parking spaces, premised on the number of proposed dwellings, is 385. Pursuant to Section 295-221, the maximum number of parking spaces is 463. The Project proposes parking spaces greater in number that 463. Matrix failed to demonstrate that its proposed parking spaces are not greater than the maximum permitted by the limitation of the parking regulations. In addition, Matrix has failed to demonstrate why the Project cannot be developed with 463 or fewer parking spaces and, therefore, failed to demonstrate that a failure to grant relief from the parking limitations would result in an unnecessary hardship.

32. Section 295-241 provides that, with regard to the regulations of the Age-restricted Overlay District, contrary regulations contained in the underlying zoning district shall not apply. However, the Preservation Overlay District is not an underlying zoning district and Section 295-241 does not relieve Matrix of compliance with the provisions of the Preservation Overlay District.

#### **DECISION**

**WHEREFORE**, this 14<sup>th</sup> day of February, 2011, the Cheltenham Township Zoning Hearing Board, by a 3-0 vote, grants to applicant(s) the following variances:

- (1) a variance from the rules and regulation of the "Floodplain District" as outlined Article XXI, Section 295-156 to allow construction or replacement of the existing 8" T.C. Sanitary Sewer Line (if required) within the 100 Year Floodplain Area;

(2) a variance from rules and regulations of the "Steep Slope Conservation District" as outlined in Article XXII, Section 295-167 to allow the construction of free-standing structures, building and retaining walls, internal accessways, driveways, parking areas, swimming pools, sanitary sewers, stormwater management facilities and other underground utilities and landscaping;

(3) a variance from the rules and regulations of the "Steep Slope Conservation District" outlined in Article XXII, Section 295-168, to allow a variance to be granted for the development without first meeting the requirement to submit plans conforming to the stated Lines and Grades Plan requirements;

(4) a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.1 to permit an Age Restricted Development;

(5) a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.3 to permit a clubhouse with common areas and meeting rooms, indoor and outdoor recreational facilities and maintenance and security facilities;

(6) a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.3 to permit a swimming pool for the residents of the Age Restricted Community only;

(7) a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.a. to allow sanitary sewer facilities, if required, within the floodplain;

(8) a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.d. to allow development within areas having a slope of 15% or greater;

(9) a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.e. to allow sanitary sewer facilities, if required, within the Riparian Buffer Areas; and

(10) variances from the rules and regulations of the "Preservation Overlay District" as outlined in Article XXIV, Sections 295-187, 295-188 and 295-189 only.

The Zoning Board has, in addition, taken the following actions:

(1) denied the appeal of the determination of the Zoning Officer and/or Township Engineer regarding man-made steep slopes as provided in Article XXII, Section 295-164.B.2.;

(2) denied the request for a determination that the Lines and Grades Plans as submitted with the Application or as revised during the course of the hearings substantially conforms with the requirements set forth in Article XXII, Section 295-168;

(3) denied the request for a determination that the number of parking spaces shown on Applicant's plans are not in excess of the maximum permitted under Article XXIX, Section 295-221.F;

(4) denied the request for a variance from the rules and regulations of Article XXIX, Section 295-221.F. to allow parking spaces exceeding 120% of the minimum required parking spaces;

(5) denied the request for variances from the rules and regulations of the "Preservation Overlay District," as outlined in Article XXIV, Section 295-190; and

(6) denied the request for an interpretation that the rules and regulations of the "Preservation Overlay District," as outlined in Article XXIV, Section 295-187 *et seq.* are not applicable to this Application.

The above grants of zoning relief are subject, however, to the following conditions:

(1) At applicant's expense, the Township shall direct a third-party professional geotechnical engineer, acceptable to the Township, to conduct, based upon an adequate number of soil borings, a comprehensive Geotechnical Investigation and Analysis (the "Analysis"). The Analysis shall be performed over the entire development footprint to determine the suitability of the site's soils for the proposed development and the loads to be imposed thereon. The Analysis shall document findings and set forth whatever soil remediation and/or construction methods should be taken to prevent excessive settlement, slope failure and other adverse effects to the maximum practicable extent. The Analysis shall be subject to the review and approval of the Township Engineer. Applicant shall thereafter follow the soil remediation measures and the construction methods as directed by the Township Engineer.

(2) The bottom of the foundation footing for all structures (including building, retaining walls, etc.) within the development shall be on a level either a minimum of three (3) feet below the existing pre-development grade or on subgrade competent to support the load being imposed, whichever level is lower. No pile footings shall be permitted.

(3) Applicant shall submit Lines and Grades Plans, compliant with no standard less than the Zoning Code, as part of Applicant's submission for preliminary or final land development approval.

(4) The development may be built in stages. However, the following infrastructure improvements shall be completed with the first stage: naturalization of the property including the return of portions of the property to a

natural state, the allocation of property to public use and the other features of the development plans described by applicant's land planner.

(5) No building, including, but not limited to, lots 67, 68, 69 and 70 as illustrated on Exhibit A-1, shall have the rear elevation facing Ashbourne Road.

(6) 75% of the trees planted on the development shall be a minimum of 4" – 5" DBH at the time of planting, as illustrated on Exhibit A-3, dated July 8, 2010.

(7) Applicant shall provide bus shelters at the three bus stops on Ashbourne Road at Croyden Road, Boyer Road and Ashmead Road.

(9) Unless otherwise prohibited by the decisions of the Zoning Hearing Board or by application of lawful federal, state or local regulations, the development shall be constructed in substantial conformity with the record, including testimony and exhibits, established by the Applicant and its witnesses during the course of the hearing in this appeal.

This grant of relief is not a waiver of any provision of the Cheltenham Zoning Ordinances not specifically addressed in this decision.

## **CHELTENHAM TOWNSHIP ZONING HEARING BOARD**

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**PETER LABIAK, Chairman**

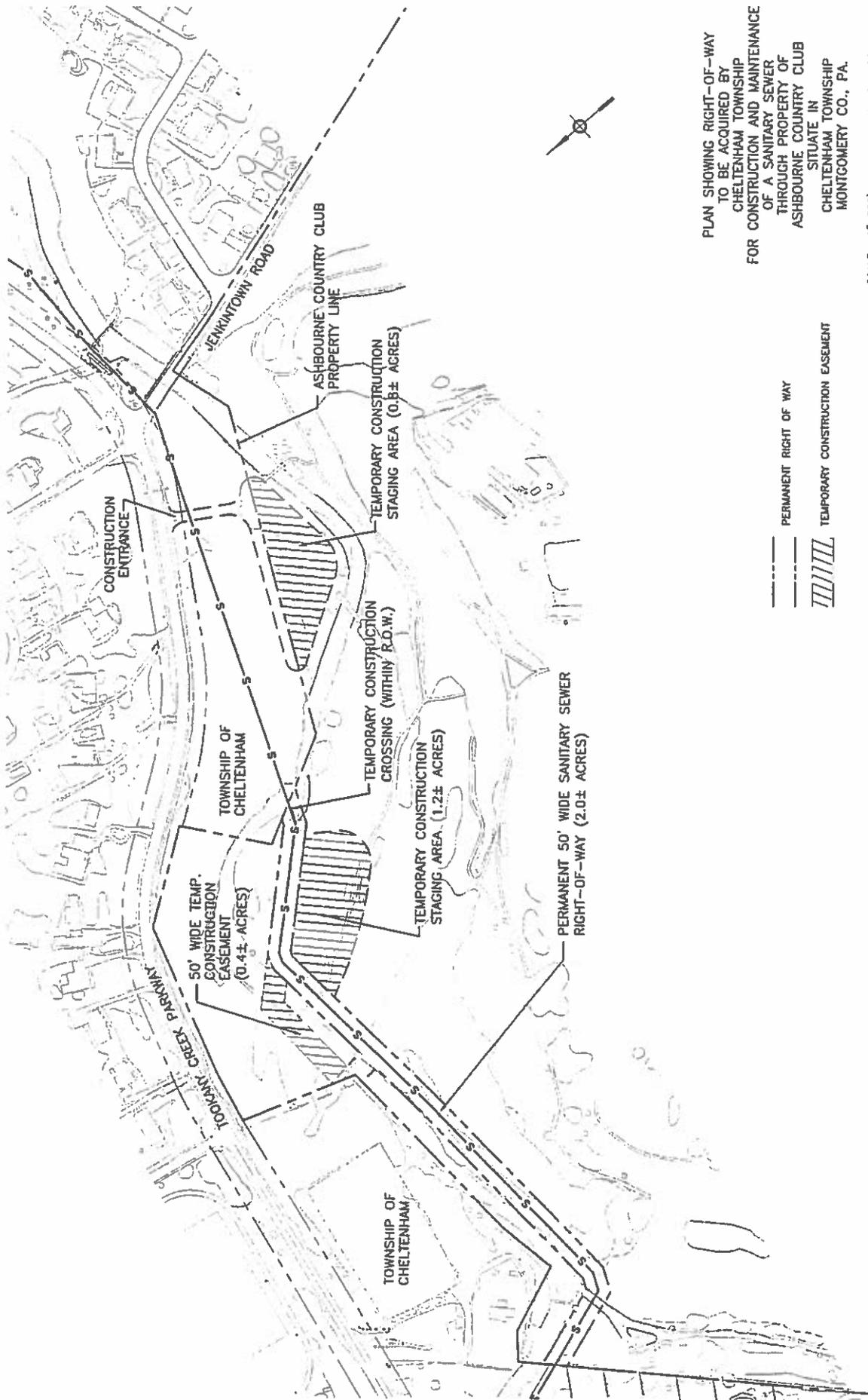
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**ALAN S. GOLD, Vice Chairman and Secretary**

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**AMEE FARRELL, Member**

**THIS DECISION IS OFFICIALLY ISSUED ON MAY 27, 2011.**



PLAN SHOWING RIGHT-OF-WAY  
 TO BE ACQUIRED BY  
 CHELTENHAM TOWNSHIP  
 FOR CONSTRUCTION AND MAINTENANCE  
 OF A SANITARY SEWER  
 THROUGH PROPERTY OF  
 ASHBOURNE COUNTRY CLUB  
 SITUATE IN  
 CHELTENHAM TOWNSHIP  
 MONTGOMERY CO., PA.

PERMANENT RIGHT OF WAY  
 TEMPORARY CONSTRUCTION EASEMENT

SCALE: 1"=200' DATE: APRIL 11, 2014



**ORDINANCE NO. 2281-14**  
**OF THE**  
**BOARD OF COMMISSIONERS**  
**OF THE**  
**TOWNSHIP OF CHELTENHAM**

TO AUTHORIZE AND DIRECT THE INCURRING OF NON-ELECTORAL DEBT THROUGH THE ISSUANCE OF ONE OR MORE SERIES OF GENERAL OBLIGATION BONDS OF THE TOWNSHIP OF CHELTENHAM, MONTGOMERY COUNTY, PENNSYLVANIA (THE "TOWNSHIP") IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF TWELVE MILLION FIVE HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$12,565,000) FOR THE PURPOSE OF PROVIDING FUNDS TO FINANCE THE CURRENT REFUNDING OF A PORTION OF THE TOWNSHIP'S GENERAL OBLIGATION BONDS, SERIES OF 2009 AND SERIES B OF 2004 AND TO FINANCE CERTAIN CAPITAL IMPROVEMENTS WITHIN THE TOWNSHIP AND TO PAY THE COST OF ISSUING THE BONDS, OR ANY OR ALL OF THE SAME; STATING THE PURPOSE OF THE REFUNDING; STATING THAT REALISTIC COST ESTIMATES HAVE BEEN MADE FOR THE PROJECT; AUTHORIZING THE PAYMENT OF OTHER CAPITAL PROJECTS UPON APPROPRIATE AMENDMENT HERETO AND STATING THE ESTIMATED PROJECT COMPLETION DATE; STATING THE REALISTIC ESTIMATED USEFUL LIFE OF THE PROJECT FOR WHICH SAID BONDS ARE ISSUED; DESCRIBING CERTAIN PRIOR PROJECTS AND RATIFYING, CONFIRMING THE ORIGINALLY ESTIMATED REALISTIC USEFUL LIFE THEREOF AND STATING THE REMAINING USEFUL LIFE THEREOF; DIRECTING THE PROPER OFFICERS OF THE GOVERNING BODY TO PREPARE, CERTIFY AND FILE THE REQUIRED DEBT STATEMENT AND BORROWING BASE CERTIFICATE; COVENANTING THAT THE TOWNSHIP SHALL INCLUDE THE AMOUNT OF ANNUAL DEBT SERVICE IN ITS BUDGET FOR EACH FISCAL YEAR; PROVIDING FOR FULLY REGISTERED BONDS, DATE OF THE BONDS, INTEREST PAYMENT DATES, PROVISIONS FOR REDEMPTION AND STATED PRINCIPAL MATURITY AMOUNTS AND FIXING THE RATES OF INTEREST ON SUCH BONDS AND PROVIDING FOR BOOK-ENTRY ONLY BONDS; AUTHORIZING THE PROPER OFFICERS OF THE TOWNSHIP TO CONTRACT WITH A BANK OR BANK AND TRUST COMPANY FOR ITS SERVICES AS SINKING FUND DEPOSITORY, PAYING AGENT AND REGISTRAR AND

STATING A COVENANT AS TO PAYMENT OF PRINCIPAL AND INTEREST WITHOUT DEDUCTION FOR CERTAIN TAXES; PROVIDING FOR THE REGISTRATION, TRANSFER AND EXCHANGE OF BONDS; PROVIDING FOR THE EXECUTION, DELIVERY AND AUTHENTICATION OF BONDS AND THE DISPOSITION OF THE PROCEEDS THEREOF; APPROVING THE FORM OF THE BONDS, PAYING AGENT'S AUTHENTICATION CERTIFICATE AND ASSIGNMENT AND PROVIDING FOR CUSIP NUMBERS TO BE PRINTED ON THE BONDS; PROVIDING FOR TEMPORARY BONDS; AWARDED SUCH BONDS AT NEGOTIATED SALE AND STATING THAT SUCH SALE IS IN THE BEST FINANCIAL INTEREST OF THE TOWNSHIP; CREATING A SINKING FUND AND APPROPRIATING ANNUAL AMOUNTS FOR THE PAYMENT OF DEBT SERVICE ON THE BONDS; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE TOWNSHIP TO CERTIFY AND TO FILE WITH THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT CERTIFIED COPIES OF THE NECESSARY PROCEEDINGS; COVENANTING THAT THE PROCEEDS OF THE BONDS SHALL NOT BE USED IN SUCH A MANNER AS TO CAUSE THE BONDS TO BE ARBITRAGE BONDS UNDER FEDERAL TAX LAW PROVISIONS, MAKING CERTAIN REPRESENTATIONS AND DESIGNATING THE BONDS AS "QUALIFIED TAX-EXEMPT OBLIGATIONS" UNDER FEDERAL TAX LAW PROVISIONS; APPROVING PARAMETERS PURCHASE CONTRACT AND AUTHORIZING ADDENDA THERETO; AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE TAX CERTIFICATES RELATED TO THE TAX-EXEMPT STATUS OF THE BONDS; APPROVING THE CONTENT AND FORM OF ONE OR MORE PRELIMINARY OFFICIAL STATEMENTS AND AUTHORIZING THE DISTRIBUTION THEREOF AND AUTHORIZING THE PREPARATION, EXECUTION AND DELIVERY OF ONE OR MORE OFFICIAL STATEMENTS AND THE UNDERTAKING OF CERTAIN CONTINUING DISCLOSURE OBLIGATIONS; AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF ONE OR MORE ESCROW AGREEMENTS, IF REQUIRED, AND OTHERWISE PROVIDING FOR THE REFUNDING OF A PORTION OF THE TOWNSHIP'S OUTSTANDING GENERAL OBLIGATION BONDS, SERIES OF 2009 AND SERIES B OF 2004; AUTHORIZING THE APPOINTMENT OF BOND COUNSEL; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE TOWNSHIP UNIT TO DO ALL THINGS

NECESSARY TO CARRY OUT THE ORDINANCE;  
AUTHORIZING AND DIRECTING THE PROPER OFFICERS  
OF THE TOWNSHIP TO PAY ISSUANCE COSTS;  
REPEALING ALL INCONSISTENT ORDINANCES;  
PROVIDING FOR SEVERABILITY OF PROVISIONS; AND  
STATING THE EFFECTIVE DATE.

The Board of Commissioners (the "Governing Body") of the Township of Cheltenham, Montgomery County, Pennsylvania (the "Township"), pursuant to the Pennsylvania Local Government Unit Debt Act, 53 Pa. Cons. Stat. §8001 *et seq.*, as amended (the "Act") hereby ORDAINS AND ENACTS as follows:

**Section 1. Incurrence of Debt; Amount and Purpose of Bonds; Realistic Cost Estimates; Other Capital Projects Upon Amendment; Estimated Project Completion Date.** The Governing Body of the Township hereby authorizes and directs the incurring of non-electoral debt through the issuance of one or more series of its General Obligation Bonds, Series of 2014 (the "Bonds") of the Township in the maximum aggregate principal amount of Twelve Million Five Hundred Sixty-Five Thousand Dollars (\$12,565,000) to provide funds to finance a project (the "Project"), consisting of (i) the current refunding of a portion of the Township's General Obligation Bonds, Series B of 2004 (the "Refunded 2004 Bonds"); (ii) the current refunding of a portion of the Township's General Obligation Bonds, Series of 2009 (the "Refunded 2009 Bonds," and together with the Refunded 2004 Bonds, the "Refunded Bonds") ((i) and (ii) together, the "Refunding Project"); (iii) the financing of a new sewer infiltration abatement project; (iv) the financing of the Jenkintown Road Bridge Replacement; (v) the financing of the Ashmead Road Bridge Replacement ((iii), (iv) and (v) together, the "Capital Project"); and (vi) the financing of the costs of issuing the Bonds, or any or all of the same (collectively, the "Project").

Pursuant to the Ordinance authorizing the issuance of the 2004B Bonds duly enacted on July 20, 2004 (the "2004B Bonds Ordinance"), the 2004B Bonds maturing on and after July 1, 2015, are subject to optional redemption in whole or in part at any time on and after July 1, 2014. The Township pursuant to authorization contained in the 2004B Bonds Ordinance and herein has elected to exercise its option to redeem on or after July 1, 2014 (the "Redemption Date") the Refunded 2004B Bonds.

Pursuant to the Ordinance authorizing the issuance of the 2009 Bonds duly enacted on February 17, 2009 (the "2009 Bonds Ordinance"), the 2009 Bonds maturing on and after July 1, 2015, are subject to optional redemption in whole or in part at any time on and after July 1, 2014. The Township pursuant to authorization contained in the 2009 Bonds Ordinance and herein has elected to exercise its option to redeem on or after July 1, 2014 (the "Redemption Date") the Refunded 2009 Bonds.

The Refunding Project is being undertaken by the Township for the purpose of reducing total debt service over the life of the series in compliance with Section 8241(b)(1) of the Act.

Realistic cost estimates have been obtained by the Township for the Project through estimates made by qualified persons, as required by Section 8006 of the Act.

The Township hereby reserves the right to undertake components of the Project in such order and at such time or times as it shall determine and to allocate the proceeds of the Bonds and other available moneys to the final costs of the Project in such amounts and order of priority as it shall determine; but the proceeds of the Bonds shall be used solely to pay the "costs", as defined in the Act, of the Project described herein or, upon appropriate amendment hereto, to pay the costs of other capital projects for which the Township is authorized to incur indebtedness.

The estimated completion date for the Capital Project is July 1, 2015.

The estimated completion date for the Refunding Project is the Redemption Date.

**Section 2. Realistic Estimated Useful Life.** The realistic useful life of the Capital Project is estimated to be in excess of 40 years and the Bonds to be issued therefor do not extend beyond the useful life thereof.

The realistic estimated useful lives of each of the projects financed with the Refunded Bonds were determined at the time of issuance of the applicable series of bonds, and the Bonds do not extend by any amount or period of time the maturities of the Refunded Bonds.

**Section 3. Debt Statement and Borrowing Base Certificate.** The President or Vice President of the Governing Body and the Secretary or Assistant Secretary of the Township or any one of them, and/or any other duly authorized or appointed officer of the Township, are hereby authorized and directed to prepare and certify a debt statement required by Section 8110 of the Act and a Borrowing Base Certificate.

**Section 4. Covenant to Pay Bonds.** It is covenanted with the registered owners from time to time of the Bonds that the Township shall (i) include the amount of the debt service for the Bonds for each fiscal year in which the sums are payable in its budget for that year; (ii) appropriate those amounts from its general revenues for the payment of the debt service; and (iii) duly and punctually pay, or cause to be paid, from its sinking fund or any other of its revenues or funds the principal of, and the interest on, the Bonds at the dates and places and in the manner stated in the Bonds according to the true intent and meaning thereof. For such budgeting, appropriation and payment, the Township pledges its full faith, credit and taxing power. As provided by the Act, this covenant shall be specifically enforceable. Nothing in this Section shall be construed to give the Township any taxing power not granted by another provision of law.

**Section 5. Description of Bonds; Maturity Schedule; Redemption of Bonds; Notice of Redemption.** For purposes of this Section 5, the following defined terms have the meaning stated below:

"DTC" means The Depository Trust Company, New York, New York, the securities depository for the Bonds, and its successors.

“Representation Letter” means the Blanket Letter of Representations, together with DTC’s Operational Arrangements referred to therein, as amended from time to time, of the Township on file with DTC and incorporated herein by reference.

A. Amount and Terms of Bonds; Redemption Provisions. The Bonds shall be in fully registered form without coupons, shall be numbered, shall be in the denomination of Five Thousand Dollars (\$5,000) or any integral multiple thereof, shall be dated the date of their delivery or such other date established for interest to begin accruing on the Bonds (the “Series Issuance Date”) and shall bear interest from the dates, which interest is payable at the rates provided herein, until maturity or prior redemption, all as set forth in the form of Bond attached hereto as Exhibit A and made a part hereof.

The Bonds shall bear interest, until maturity or prior redemption, at the rates per annum not greater than, and shall mature in the amounts not greater than and on July 1 of certain years, all as set forth in the maturity schedule attached hereto as Exhibit B and made a part hereof.

The stated maximum maturities of the Bonds as shown in Exhibit B have been fixed in compliance with Section 8142(b)(2) of the Act. In addition, the Capital Project is estimated to be completed by July 1, 2015, and the first stated principal installment of the Bonds shall be made within one year following such estimated completion date in compliance with Section 8142(c) of the Act.

The Paying Agent (as hereinafter defined) is hereby authorized and directed to cause a notice of redemption to be given once by first-class United States mail, postage prepaid, or by another method of giving notice which is acceptable to the Paying Agent and customarily used by fiduciaries for similar notices at the time such notice is given, at least thirty (30) days prior to the redemption date, to each registered owner of Bonds to be redeemed. Such notice shall be mailed to the address of such registered owner appearing on the registration books of the Paying Agent, unless such notice is waived by the registered owner of the Bonds to be redeemed. Any such notice shall be given in the name of the Township, shall identify the Bonds to be redeemed, including CUSIP numbers, if applicable, which may, if appropriate, be expressed in designated blocks of numbers (and, in the case of partial redemption of any Bonds, the respective principal amounts thereof to be redeemed), shall specify the redemption date and the place where such Bonds are to be surrendered for payment, shall state the redemption price, and shall state that on the redemption date the Bonds called for redemption will be payable and from such redemption date interest will cease to accrue. Failure to give any notice of redemption or any defect in the notice or in the giving thereof to the registered owner of any Bond to be redeemed shall not affect the validity of the redemption as to other Bonds for which proper notice shall have been given. The costs incurred for such redemptions shall be paid by the Township.

For so long as DTC is effecting book-entry transfers of the Bonds, the Paying Agent shall provide the notices specified above only to DTC in accordance with its applicable time requirements. It is expected that DTC in turn will notify its Participants and that the Participants, in turn, will notify or cause to be notified the beneficial owners. Any failure on the part of DTC or a Participant, or failure on the part of a nominee of a beneficial owner of a Bond (having been mailed notice from the Paying Agent, a Participant or otherwise) to notify the

beneficial owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

In addition to the notices described in the preceding paragraphs, further notice shall be given by the Paying Agent as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed above.

(i) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption, plus (A) the date of issue of the Bonds as originally issued; (B) the rate of interest borne by each Bond being redeemed; (C) the maturity date of each Bond being redeemed; and (D) any other descriptive information needed to identify accurately the Bonds being redeemed.

(ii) Each further notice of redemption shall be sent at least twenty-five (25) days before the redemption date to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") System, and to other information repositories approved from time to time by the United States Securities and Exchange Commission.

(iii) Such further notice, if deemed to be necessary or desirable by the Township and the Paying Agent, may also be mailed by first class United States mail, postage prepaid, to The Bond Buyer of New York, New York, or to another financial newspaper or journal which regularly carries notices of redemption of other obligations similar to the Bonds.

(iv) Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

The notices required to be given by this Section shall state that no representation is made as to the correctness or accuracy of CUSIP numbers listed in such notice or stated on the Bonds.

If at the time of the mailing of any notice of optional redemption the Township shall not have deposited with the Paying Agent moneys sufficient to redeem all the Bonds called for redemption, such notice shall state that it is conditional, that is, subject to the deposit or transfer of the redemption moneys with the Paying Agent not later than the opening of business on the redemption date, and that such notice shall be of no effect unless such moneys are so deposited.

B. Book-Entry Only System. Notwithstanding the foregoing provisions of this Section 5, so long as the Bonds are in book-entry form, the following provisions will apply:

(i) The Bonds, upon original issuance, will be issued in the form of a single, fully registered bond for each maturity in the denomination equal to the principal amount of Bonds maturing on each such date and will be deposited with DTC. Each such Bond will initially be registered to Cede & Co., the nominee for DTC, or such other name as may be requested by an authorized representative of DTC, and no beneficial owner will receive

certificates representing their respective interests in the Bonds, except in the event that the use of the book-entry system for the Bonds is discontinued. It is anticipated that during the term of the Bonds, DTC will make book-entry transfers among its Participants and receive and transmit payment of principal and premium, if any, and interest on, the Bonds to the Participants until and unless the Paying Agent authenticates and delivers Replacement Bonds to the beneficial owners as described in subsection (vi).

(ii) The execution and delivery by the Township of the Representation Letter shall not in any way create, expand or limit any undertaking or arrangement contemplated or provided for herein in respect of DTC or the book-entry registration, payment and notification system or in any other way impose upon the Township or the Paying Agent any obligation whatsoever with respect to beneficial owners having interests in the Bonds, any such obligation extending solely to DTC, as sole bondholder, as shown on the registration books kept by the Paying Agent. The Paying Agent shall take all action necessary for all representations of the Township in the Representation Letter with respect to the Paying Agent to be complied with at all times.

(iii) So long as the Bonds or any portion thereof are registered in the name of Cede & Co., or such other DTC nominee, all payments of principal, premium, if any, or redemption price of, and interest on, the Bonds shall be made to DTC or its nominee in accordance with the Representation Letter on the dates provided for such payments under this Ordinance. All payments made by the Paying Agent to DTC or its nominee shall fully satisfy the Township's obligations to pay principal, premium, if any, and interest, on the Bonds to the extent of such payments, and no beneficial owner of any Bond registered in the name of Cede & Co., or such other DTC nominee, shall have any recourse against the Township or the Paying Agent hereunder for any failure by DTC or its nominee or any Participant therein to remit such payments to the beneficial owners of such Bonds.

(iv) If all or fewer than all Bonds of a maturity are to be redeemed, the Paying Agent shall notify DTC within the time periods required by the Representation Letter. If fewer than all Bonds of a maturity are to be redeemed, DTC shall determine by lot the amount of the interest of each Participant in the maturity of Bonds to be redeemed. In the event of the redemption of less than all of the Bonds outstanding, the Paying Agent shall not require surrender by DTC or its nominee of the Bonds so redeemed, but DTC (or its nominee) may retain such Bonds and make an appropriate notation on the Bond certificate as to the amount of such partial redemption; *provided that*, in each case the Paying Agent shall request, and DTC shall deliver to the Paying Agent, a written confirmation of such partial redemption and thereafter the records maintained by the Paying Agent shall be conclusive as to the amount of the Bonds of such maturity which have been redeemed.

(v) In the event DTC resigns or is no longer qualified to act as a securities depository and registered clearing agency under the Securities Exchange Act of 1934, as amended, the Township may appoint a successor securities depository provided the Paying Agent receives written evidence satisfactory to the Paying Agent with respect to the ability of the successor securities depository to discharge its responsibilities. Any such successor securities depository shall be a registered clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon

reasonable and customary terms. The Paying Agent upon its receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor securities depository in appropriate denominations and form as provided herein.

(vi) If DTC resigns and the Township is unable to locate a qualified successor of DTC in accordance with subsection (v), then the Paying Agent, based on information provided to it by DTC, shall notify the beneficial owners of the Bonds of the availability of certificates to beneficial owners of Bonds requesting the same, and the Paying Agent shall register in the name of and authenticate and deliver Bonds (the "Replacement Bonds") to the beneficial owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to the date of such Replacement Bonds, accrued interest and previous calls for redemption. In such event, all references to DTC herein shall relate to the period of time when DTC or its nominee is the registered owner of at least one Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by DTC shall be deemed to be imposed upon and performed by the Paying Agent, to the extent applicable with respect to such Replacement Bonds. The Paying Agent may rely on information from DTC and its Participants as to the names, addresses, taxpayer identification numbers of and principal amount held by the beneficial owners of the Bonds.

**Section 6. Paying Agent, Sinking Fund Depository and Registrar; Payment of Principal and Interest Without Deduction for Taxes.** The proper officers of the Township are hereby authorized and directed to contract with The Bank of New York Mellon Trust Company, N.A., having corporate trust offices in Philadelphia, Pennsylvania, for its services as sinking fund depository, paying agent and registrar with respect to the Bonds and such Bank is hereby appointed to act in such capacities with respect to the Bonds.

The principal or redemption price of the Bonds shall be payable upon surrender thereof when due in lawful money of the United States of America at the designated office of the The Bank of New York Mellon Trust Company, N.A., or at the designated office of any additional or appointed alternate or successor paying agent or agents (the "Paying Agent"). Such payments shall be made to the registered owners of the Bonds so surrendered, as shown on the registration books of the Township on the date of payment. Interest on the Bonds shall be paid by check mailed to the registered owner of such Bond as shown on the registration books kept by the Paying Agent, as of the close of business on the fifteenth (15th) day of the calendar month (whether or not a business day) immediately preceding the interest payment date in question (the "Regular Record Date"), irrespective of any transfer or exchange of such Bond subsequent to such Regular Record Date and prior to such interest payment date. If the Township shall default in the payment of interest due on such interest payment date, such interest shall thereupon cease to be payable to the registered owners of the Bonds shown on the registration books as of the Regular Record Date. Whenever moneys thereafter become available for the payment of the defaulted interest, the Paying Agent on behalf of the Township shall immediately establish a "special interest payment date" for the payment of the defaulted interest and a "special record date" (which shall be a business day) for determining the registered owners of Bonds entitled to such payments; *provided, however*, that the special record date shall be at least ten (10) days but not more than fifteen (15) days prior to the special interest payment date. Notice of each date so established shall be mailed by the Paying Agent on behalf of the Township to each registered owner of a Bond at least ten (10) days prior to the special record date, but not more than thirty

(30) days prior to the special interest payment date. The defaulted interest shall be paid on the special interest payment date by check mailed to the registered owners of the Bonds, as shown on the registration books kept by the Paying Agent as of the close of business on the special record date.

If the date for payment of the principal or redemption price of, and interest on, the Bonds shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the Commonwealth of Pennsylvania or in each of the cities in which the corporate trust office or payment office of the Paying Agent are located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

Any corporation or association into which the Paying Agent, or any additional or appointed alternate or successor to it, may be merged or converted or with which it, or any additional or appointed alternate or successor to it, may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Paying Agent shall be a party, or any corporation or association to which the Paying Agent, or any additional or appointed alternate or successor to it, sells or otherwise transfers all or substantially all of its corporate trust business shall be the successor paying agent hereunder, without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

**Section 7. Registration, Transfer and Exchange of Bonds.** The Township shall keep, at the corporate trust and/or payment office of the Paying Agent, as registrar, books for the registration, transfer and exchange of Bonds. The Governing Body hereby authorizes and directs the Paying Agent, as registrar and transfer agent, to keep such books and to make such transfers or exchanges on behalf of the Township.

The ownership of each Bond shall be recorded in the registration books of the Township, which shall contain such information as is necessary for the proper discharge of the Paying Agent's duties hereunder as Paying Agent, registrar and transfer agent.

The Bonds may be transferred or exchanged as follows:

(a) Any Bond may be transferred if endorsed for such transfer by the registered owner thereof and surrendered by such owner or his duly appointed attorney or other legal representative at the designated office of the Paying Agent, whereupon the Paying Agent shall authenticate and deliver to the transferee a new Bond or Bonds of the same maturity [and series designation] and in the same denomination as the Bond surrendered for transfer or in different authorized denominations equal in the aggregate to the principal amount of the surrendered Bond.

(b) Bonds of a particular maturity may be exchanged for one or more Bonds of the same maturity and series designation and in the same principal amount, but in a different authorized denomination or denominations. Each Bond so to be exchanged shall be surrendered by the registered owner thereof or his duly appointed attorney or other legal representative at the

designated office of the Paying Agent, whereupon a new Bond or Bonds shall be authenticated and delivered to the registered owner.

(c) In the case of any Bond properly surrendered for partial redemption, the Paying Agent shall authenticate and deliver a new Bond in exchange therefor, such new Bond to be of the same maturity and series designation and in a denomination equal to the unredeemed principal amount of the surrendered Bond; *provided that*, at its option, the Paying Agent may certify the amount and date of partial redemption upon the partial redemption certificate, if any, printed on the surrendered Bond and return such surrendered Bond to the registered owner in lieu of an exchange.

Except as provided in subparagraph (c) above, the Paying Agent shall not be required to effect any transfer or exchange during the fifteen (15) days immediately preceding the date of mailing of any notice of redemption or at any time following the mailing of any such notice, if the Bond to be transferred or exchanged has been called for such redemption. No charge shall be imposed in connection with any transfer or exchange except for taxes or governmental charges related thereto.

No transfers or exchanges shall be valid for any purposes hereunder except as provided above. New Bonds delivered upon any transfer or exchange of outstanding Bonds shall be valid general obligations of the Township, evidencing the same debt as the Bonds surrendered.

The Township and the Paying Agent may treat the registered owner of any Bond as the absolute owner thereof for all purposes, whether or not such Bond shall be overdue, and any notice to the contrary shall not be binding upon the Township or the Paying Agent.

**Section 8. Execution, Delivery and Authentication of Bonds; Disposition of Proceeds.** The Bonds shall be executed by the manual or facsimile signature of the President or Vice President of the Governing Body and shall have the corporate seal of the Township or a facsimile thereof affixed, imprinted, lithographed or reproduced thereon, duly attested by the manual or facsimile signature of the Secretary or Assistant Secretary of the Township, and the said officers are hereby authorized and directed to execute the Bonds in such manner. In case any official of the Township whose manual or facsimile signature shall appear on the Bonds shall cease to be such official before the authentication of such Bonds such signature or the facsimile signature thereof shall nevertheless be valid and sufficient for all purposes the same as if such official had remained in office until authentication; and any Bond may be signed on behalf of the Township, even though at the date of authentication of such Bonds such person was not an official. The President or Vice President of the Governing Body is authorized and directed to deliver, or cause to be delivered, the Bonds to the purchasers thereof against the full balance of the purchase price therefor. The Bonds shall be authenticated by the Paying Agent.

The proceeds of the Bonds shall be deposited in a settlement fund which the Paying Agent shall create and shall be disbursed, transferred or deposited as directed in a closing receipt duly executed and delivered by an authorized officer of the Township on the date of issuance and delivery of the Bonds.

**Section 9. Form of Bonds; CUSIP Numbers.** The form of the Bonds, paying agent's authentication certificate and assignment shall be substantially as set forth in Exhibit A attached hereto. The Bonds shall be executed in substantially the form as set forth in Exhibit A hereto with such appropriate changes, additions or deletions as may be approved by the officers executing the Bonds in the manner provided in Section 8 hereof; such execution shall constitute approval by such officers on behalf of the Governing Body. The opinion of bond counsel is authorized and directed to be printed upon the Bonds.

The Township, pursuant to recommendations promulgated by the Committee on Uniform Security Identification Procedures (CUSIP) has caused CUSIP numbers to be printed on the Bonds. No representation is made as to the accuracy of said numbers either as printed on the Bonds or as contained in any notice of redemption, and the Township shall have no liability of any sort with respect thereto. Reliance upon any redemption notice with respect to the Bonds may be placed only on the identification numbers printed thereon.

**Section 10. Temporary Bonds.** Until Bonds in definitive form are ready for delivery, the proper officers of the Governing Body may execute and, upon their request in writing, the Paying Agent shall authenticate and deliver in lieu of such Bonds in definitive form one or more printed or typewritten bonds in temporary form, substantially of the tenor of the Bonds hereinbefore described with appropriate omissions, variations and insertions, as may be required. Such bond or bonds in temporary form may be for the principal amount of Five Thousand Dollars (\$5,000) or any whole multiple or multiples thereof, as such officers may determine. The aforesaid officers, without unnecessary delay, shall prepare, execute and deliver Bonds in definitive form to the Paying Agent, and thereupon, upon presentation and surrender of the bond or bonds in temporary form, the Paying Agent shall authenticate and deliver, in exchange therefor, Bonds in definitive form in an authorized denomination of the same maturity for the same aggregate principal amount as the bond or bonds in temporary form surrendered. Such exchange shall be made by the Township at its own expense and without any charge therefor. When and as interest is paid upon bonds in temporary form without coupons, the fact of such payment shall be endorsed thereon. Until so exchanged, the temporary bond or bonds shall be in full force and effect according to their terms.

**Section 11. Manner of Sale; Award of Bonds; Bid Price; Range of Interest Rates.** The Governing Body of the Township after due deliberation and investigation has found that a private sale by negotiation is in the best financial interest of the Township, and based upon such finding the Governing Body of the Township hereby awards the Bonds at private negotiated sale to PNC Capital Markets LLC (the "Underwriter"), upon the terms set forth in its bond purchase contracts, a copy of which contracts are attached hereto and made a part hereof, and any supplement or addendum thereto executed and delivered at the actual dates of sale of the Bonds to the Underwriter (collectively, the "Purchase Contracts"). The Purchase Contracts provide that the Underwriter shall pay to the Township specified amounts at specified times and under conditions stated therein, and the Township agrees to sell and deliver the Bonds to the Underwriter under the conditions set forth in such Purchase Contracts.

Such details and conditions of the Purchase Contracts are hereby approved; *provided however*, that the aggregate principal amount of the Bonds shall not exceed \$12,565,000; the latest maturity date of the Bonds shall not be later than July 1, 2034; the annual

principal maturity or mandatory redemption amounts shall not exceed the annual amounts thereof set forth in Exhibit B; the interest rate of the Bonds shall not exceed 6.000% per annum; the purchase price for the Bonds, including underwriting discount and net original issue discount/premium, shall be not less than 90% nor more than 120% of the aggregate principal amount plus interest accrued on the Bonds; and the underwriter's discount on the Bonds shall not exceed Four and 91/100 Dollars (\$4.91) per Bond in the aggregate. The President, Vice President, Township Manager or Director of Fiscal Affairs of the Township is hereby authorized and directed to execute the Purchase Contracts (subject, however, to compliance with the aforesaid limitations) in such form as the Township's counsel, financial advisor and bond counsel may advise evidencing the Township's acceptance thereof, and deliver the same to the Underwriter.

**Section 12. Sinking Fund; Appropriation of Annual Amounts for Payment of Debt Service.** There are hereby established two separate sinking funds for the Township designated as "Sinking Fund - Township of Cheltenham General Obligation Bonds, Series of 2014 (Refunding Project)" and "Sinking Fund - Township of Cheltenham General Obligation Bonds, Series of 2014 (Capital Project)" (together, the "Sinking Funds") and into the Sinking Funds there shall be paid, when and as required, all moneys necessary to pay the debt service on the Bonds, and the Sinking Funds shall be applied exclusively to the payment of the interest covenanted to be paid upon the Bonds and to the principal thereof at maturity or prior redemption and to no other purpose whatsoever, except as may be authorized by law, until the same shall have been fully paid.

The not to exceed amounts set forth in Exhibit C attached hereto and made a part hereof, or such greater or lesser amount as at the time shall be sufficient to pay the principal of and interest on the Bonds as they become due, shall be pledged in each of the fiscal years shown in Exhibit C to pay the debt service on the Bonds, and such amounts are annually hereby appropriated to the Sinking Funds for the payment thereof.

**Section 13. Debt Proceedings.** The Secretary or Assistant Secretary of the Township is hereby authorized and directed to certify to and file with the Pennsylvania Department of Community and Economic Development, in accordance with the Act, a complete and accurate copy of the proceedings taken in connection with the increase of debt authorized hereunder, including the debt statement and borrowing base certificate referred to hereinabove, to prepare and file any statements required by the Act which are necessary to qualify all or any portion of non-electoral or lease rental debt of the Township as self-liquidating or subsidized debt, and to pay the filing fees necessary in connection therewith.

**Section 14. Tax Covenants, Representations and Designations.** So long as the Bonds are outstanding, the following covenants shall apply:

- (a) General Covenants: The Township hereby covenants that:

(i) The Township will make no use of the proceeds of the Bonds during the term thereof which would cause such Bonds to be "arbitrage bonds" within the meaning of section 148 of the Internal Revenue Code of 1986, as amended (the "Code") and that it will comply with the requirements of all Code sections necessary to ensure that the Bonds are described in Code section 103(a) and not described in Code section 103(b) throughout the term of the Bonds; and

(ii) If and to the extent the Township is required to remit any amounts to the United States pursuant to Code section 148(f) (the "Rebate Amounts") in order to cause the Bonds not to be arbitrage bonds, the Township will remit such Rebate Amounts at such times and in the manner required by Code section 148(f) and the regulations thereunder. The obligation to remit the Rebate Amounts and to comply with all other requirements of this Section 14 shall survive the defeasance and payment in full of the Bonds.

(b) Bank Qualified Bonds. In order to ensure that the registered owners of the Bonds, if they are financial institutions, will not be subject to certain provisions of the Code as a result of acquiring and carrying the Bonds, the Township hereby designates the Bonds (to the extent the Bonds are not otherwise deemed designated) as "qualified tax-exempt obligations," within the meaning of Code section 265(b)(3)(B), and the Township hereby covenants that it will take such steps as may be necessary to cause the Bonds to continue to be obligations described in such Code section during the period in which the Bonds are outstanding. The Township represents that it has not issued, and does not reasonably anticipate issuing, tax-exempt obligations which, when combined with the Bonds, will result in more than \$10,000,000 of tax-exempt obligations being issued in the calendar year in which the Bonds are issued. For purposes only of the foregoing sentence, the term "tax-exempt obligation" shall include any "qualified 501(c)(3) bond," as defined in Code section 145, but shall not include any other "private activity bond," as defined in Code section 141(a), any obligation which would be an "industrial development bond" or a "private loan bond" as defined in sections 103(b)(2) and 103(o)(2)(a) of the Internal Revenue Code of 1954, as amended, but for the fact that it is issued pursuant to section 1312, 1313, 1316(g) or 1317 of the Tax Reform Act of 1986, or any obligation issued to currently refund any obligation to the extent the amount thereof does not exceed the outstanding amount of the refunded obligation.

**Section 15. Preliminary Official Statement; Official Statement; Continuing Disclosure.** The Preliminary Official Statement in the form presented at this meeting (a copy of which shall be filed with the records of the Township), is hereby approved with such subsequent, necessary and appropriate additions or other changes as may be approved by the proper officer of the Township with the advice of counsel. The use and distribution of the Preliminary Official Statement by the Underwriter in the form hereby approved, and the distribution thereof on and after the date hereof, with such subsequent additions or other changes as aforesaid, is hereby authorized in connection with the public offering by the Underwriter of the Bonds. An Official Statement in substantially the same form as the Preliminary Official Statement, with such additions and other changes, if any, as may be approved by the Township's officer executing the same with the advice of counsel, such approval to be conclusively evidenced by the execution thereof, is hereby authorized and directed to be prepared and upon its preparation, to be executed by the President or Vice President of the Township following such investigation as such officer

deems necessary as to the contents thereof. The Township hereby further approves the distribution and use of the Official Statement as so prepared and executed in connection with the sale of the Bonds.

The Township covenants to provide such continuing disclosure, at such times, in such manner and of such nature as is described in the Official Statement and to execute and deliver such agreements and certificates with respect to continuing disclosure as are described in the Official Statement. Any continuing disclosure filing under this Ordinance may be made by transmitting such filing to the continuing disclosure service of the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") System.

#### **Section 16. Current Refunding of Refunded Bonds.**

The proper officers of the Township, with respect to the current refunding of the Refunded Bonds, are hereby authorized and directed to contract with The Bank of New York Mellon Trust Company, N.A., as the true and lawful attorney and agent of the Township to effect the redemption and payment, including payment of interest, of the Refunded Bonds and hereby further ratifies and confirms said Bank as the paying agent, sinking fund depository and registrar for the Refunded Bonds.

Subject only to completion of delivery of, and settlement for, the Bonds, the Township hereby authorizes and directs the irrevocable deposit, in trust, in the sinking fund for the Refunded Bonds (the "Refunded Bonds Sinking Fund") established with the Refunded Bonds Paying Agent under the Refunded Bonds Ordinance proceeds of the Bonds in an amount which will be sufficient, without regard to investment earnings to effect the current refunding and redemption of the Refunded Bonds on the Redemption Date. Upon receipt of such proceeds and until applied to the redemption and payment of the Refunded Bonds, the Refunded Bonds Paying Agent is authorized and directed to invest the same in accordance with written instructions of the Township. The Township covenants and agrees that such investment shall at all times be in compliance with applicable law. On the Redemption Date, the Refunded Bonds Paying Agent is irrevocably authorized and directed to pay from the Refunded Bonds Sinking Fund the principal or redemption price of, and interest due on, the Refunded Bonds and to transfer any balance remaining in the Refunded Bonds Sinking Fund not required for such redemption and payment to the Paying Agent for deposit in the applicable Sinking Fund established hereunder for application to the payment of interest due on the Bonds on the first interest payment date. The Refunded Bonds Paying Agent, in the name, place and stead of the Township, is hereby authorized and directed to give notice of redemption with respect to the Refunded Bonds as required by the terms of the Refunded Bonds and the Refunded Bonds Ordinance by mail or by another method of giving notice which is acceptable to the Refunded Bonds Paying Agent and customarily used by fiduciaries for similar notices at the time such notice is given. Such notice, substantially in the form attached hereto as Exhibit D is hereby approved. The Township hereby agrees to provide for payment of the expenses of giving such notice from proceeds of the Bonds or from moneys otherwise made available by the Township and gives and grants the Refunded Bonds Paying Agent full authority to do and perform all and every act and thing whatsoever requisite and necessary to effectuate said purposes as the Township might do on its own behalf, and hereby ratifies and confirms all that said agent shall do or cause to be done by virtue thereof.

Notwithstanding the foregoing, The Township hereby authorizes and directs the preparation of one or more Escrow Agreements (the "Escrow Agreements") to be entered into between the Township and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the "Escrow Agent"), if required for the refunding of the Refunded Bonds, containing such terms and provisions as may be approved by the Township, with the advice of the Township's counsel and bond counsel (a copy of which shall be filed with the records of the Township). The President or Vice President of the Governing Body (or other authorized officer of the Township) is hereby authorized and directed to execute and deliver the Escrow Agreements, subject to such subsequent additions, changes, variations, omissions, insertions and modifications, if any, as may be approved by the officer executing the same, with the advice of the Township's counsel and bond counsel, the execution of the Escrow Agreements to be conclusive evidence of such approval, and the Secretary or Assistant Secretary (or other authorized officer of the Township) is hereby authorized and directed to affix thereto the corporate seal of the Township and to attest the same.

Subject only to completion of delivery of, and settlement for the Bonds, the Township authorizes and directs the irrevocable deposit in trust with the Escrow Agent of proceeds of the Bonds in an amount which will be sufficient, together with the interest earned thereon and any other available moneys, to effect the current refunding of the Refunded Bonds. The Escrow Agent is irrevocably authorized and directed to apply the moneys so to be made available to it in accordance with the Escrow Agreements or as otherwise directed in writing by the Township. The Escrow Agent, in the name, place and stead of the Township, is hereby authorized and directed to give notice of redemption to the owners of the Refunded Bonds being refunded in the manner and at the times required by the terms of the Refunded Bonds. Such notice, in the form attached hereto as Exhibit D, is hereby approved, subject to such changes, variations, omissions, insertions and modifications, if any, as may be approved by the Township, with the advice of the Township's Counsel and Bond Counsel. The Township hereby agrees to provide for payment of the expenses of giving such notice from proceeds of the Bonds or from moneys otherwise made available by the Township and gives and grants the Escrow Agent full authority to do and perform all and every act and thing whatsoever requisite and necessary to effectuate said purposes as the Township might do on its own behalf, and hereby ratifies and confirms all that said agent shall do or cause to be done by virtue thereof.

Subject only to completion of delivery of, and settlement for, the Bonds, the Township hereby calls the Refunded Bonds for redemption and payment on the Redemption Date, which is a date approved by a date that permits the refunding of the Refunded Bonds to qualify as a current refunding pursuant to the Code and the Treasury Regulations thereunder in effect.

**Section 17. Municipal Bond Insurance.** Only if deemed to be necessary by the Township, the Township hereby authorizes and directs the purchase of municipal bond insurance and the payment of the premium therefor from the proceeds of the Bonds. The proper officers of the Township are hereby authorized, directed and empowered on behalf of the Township to execute any and all agreements, papers and documents necessary or proper in connection with the application for, and issuance of, municipal bond insurance.

#### **Section 18. Appointment of Bond Counsel**

Dilworth Paxson LLP is hereby appointed to act as bond counsel for the Township with respect to the issuance of the Bonds.

**Section 19. Incidental Actions.** The proper officers of the Township are hereby authorized, directed and empowered on behalf of the Township to execute any and all agreements, papers and documents and to do or cause to be done any and all acts and things necessary or proper for the carrying out of the purposes of this Ordinance and, if necessary, in connection with the application for, and issuance of, municipal bond insurance.

**Section 20. Payment of Issuance Costs.** The proper officers of the Township are hereby authorized and directed to pay the costs of issuing and, only if necessary, insuring the Bonds at the time of delivery of the Bonds to the Underwriter, such costs being estimated in the proposal attached hereto.

**Section 21. Inconsistent Ordinances.** All ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed.

**Section 22. Severability.** In case any one or more of the provisions of this Ordinance shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Ordinance and this Ordinance shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

**Section 23. Effective Date.** This Ordinance shall become effective on the earliest date permitted by the Act.

I HEREBY CERTIFY that the foregoing is a true and correct copy of an Ordinance duly enacted by the affirmative vote of a majority of the members of the Governing Body of the Township of Cheltenham, Montgomery County, Pennsylvania (the "Township"), at a public meeting held the 21st day of May, 2014; that proper notice of such meeting was duly given as required by law; and that said Ordinance has been duly entered upon the Minutes of said Governing Body, showing how each member voted thereon.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Township this 21st day of May, 2014.

*Harvey Portner*

---

Harvey Portner, President  
Board of Commissioners

*Bryan T. Havir*

Attest:

---

Bryan T. Havir, Township Manager and Secretary

EXHIBIT A  
to Ordinance of  
Township of Cheltenham  
Montgomery County, Pennsylvania  
Enacted May 21, 2014

Form of Bonds

*Unless this bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Paying Agent or its agent for registration of transfer, exchange or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.*

No. \$ \_\_\_\_\_

UNITED STATES OF AMERICA  
COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF MONTGOMERY

Township of Cheltenham  
General Obligation Bonds, Series of 2014

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>SERIES ISSUANCE DATE</u>	<u>CUSIP</u>
----------------------	----------------------	-----------------------------	--------------

**REGISTERED OWNER:**

**PRINCIPAL AMOUNT:** **DOLLARS**

The Township of Cheltenham, Montgomery County, Pennsylvania (the "Township"), existing by and under the laws of the Commonwealth of Pennsylvania, for value received, hereby acknowledges itself indebted and promises to pay to the registered owner named above on the maturity date specified above, unless this bond shall have been previously called for redemption in whole or in part and payment of the redemption price shall have been duly made or provided for, the principal amount shown above; and to pay interest thereon at the annual rate specified above (computed on the basis of a 360-day year of twelve 30-day months) from the most recent Regular Interest Payment Date (as hereinafter defined) to which interest has

been paid or duly provided for, or from the Series Issuance Date shown above, if no interest has been paid. Such payments of interest shall be made on \_\_\_\_\_ and on each \_\_\_\_\_ and \_\_\_\_\_ thereafter (each, a "Regular Interest Payment Date") until the principal or redemption price hereof has been paid or provided for as aforesaid. The principal or redemption price of, and interest on, this bond may be paid in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts.

The principal or redemption price of this bond is payable upon presentation and surrender hereof at the office of The Bank of New York Mellon Trust Company, N.A., in Philadelphia, Pennsylvania, or at the designated office of any additional or appointed alternate or successor paying agent or agents (the "Paying Agent"). Interest shall be paid by check mailed to the registered owner hereof, as shown on the registration books kept by the Paying Agent as of the close of business on the applicable Regular or Special Record Date (each as hereinafter defined).

The record date for any Regular Interest Payment Date (each, a "Regular Record Date") shall be the fifteenth (15th) day of the calendar month (whether or not a business day) immediately preceding each Regular Interest Payment Date. In the event of a default in the payment of interest becoming due on any Regular Interest Payment Date, the interest so becoming due shall forthwith cease to be payable to the registered owners otherwise entitled thereto as of such date. Whenever moneys become available for the payment of such overdue interest, the Paying Agent shall on behalf of the Township establish a special interest payment date (the "Special Interest Payment Date") on which such overdue interest shall be paid and a special record date (which shall be a business day) relating thereto (the "Special Record Date"), and shall mail a notice of each such date to the registered owners of all Bonds (as hereinafter defined) at least ten (10) days prior to the Special Record Date, but not more than thirty (30) days prior to the Special Interest Payment Date. The Special Record Date shall be at least ten (10) days but not more than fifteen (15) days prior to the Special Interest Payment Date.

If the date for payment of the principal or redemption price of, and interest on, this bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the Commonwealth of Pennsylvania or in each of the cities in which the corporate trust or payment office of the Paying Agent are located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

So long as The Depository Trust Company ("DTC") or its nominee, CEDE & Co., is registered owner hereof, all payments of principal and premium, if any, and interest on, this bond shall be payable in the manner and at the respective times of payment provided for in the Representation Letter (the "Representation Letter") defined in, and incorporated into, the Ordinance referred to herein.

This bond is one of the Township's General Obligation Bonds, Series [A] [B] of 2014 (the "Series [A] [B] Bonds") issued as one of two series in the aggregate principal amount of \$\_\_\_\_\_, comprised of \$\_\_\_\_\_ aggregate principal amount of Series [A] [B] Bonds and

\$\_\_\_\_\_ aggregate principal amount of Series B Bonds (the "Series [A] [B] Bonds" and collectively, the "Bonds"), all of like tenor, except as to series designation, interest rate, date of maturity and provisions for redemption. The Bonds are issuable only in the form of fully registered bonds without coupons in the denomination of \$5,000 or integral multiples thereof and are issued in accordance with the provisions of the Pennsylvania Local Government Unit Debt Act, 53 Pa. Cons. Stat. §8001 *et seq.*, as amended (the "Act") and by virtue of an ordinance of the Township duly enacted (the "Ordinance"), and the sworn statement of the duly authorized officers of the Township as appears on record in the office of the Pennsylvania Department of Community and Economic Development, Harrisburg, Pennsylvania.

It is covenanted with the registered owners from time to time of this bond that the Township shall (i) include the amount of the debt service for each fiscal year in which the sums are payable in its budget for that year; (ii) appropriate those amounts from its general revenues for the payment of the debt service; and (iii) duly and punctually pay or cause to be paid from its sinking fund or any other of its revenues or funds the principal or redemption price of, and the interest on, this bond at the dates and places and in the manner stated in this bond, according to the true intent and meaning thereof. For such budgeting, appropriation and payment, the Township pledges its full faith, credit and taxing power. As provided in the Act, this covenant shall be specifically enforceable; subject, however, as to the enforceability of remedies to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally. Nothing in this paragraph shall be construed to give the Township any taxing power not granted by another provision of law.

#### OPTIONAL REDEMPTION

The Bonds maturing on or after \_\_\_\_\_ are subject to redemption prior to maturity at the option of the Township, at the redemption price of 100% of the principal amount of Bonds to be redeemed, plus accrued interest to the date fixed for redemption, in whole or, from time to time, in part (and if in part, in such order of maturity or portion of a maturity as the Township shall select and within a maturity by lot) at any time on and after \_\_\_\_\_.

#### MANDATORY REDEMPTION

The Bonds maturing on \_\_\_\_\_, are subject to mandatory redemption prior to maturity in part, by lot, on \_\_\_\_\_ of each of the years \_\_\_\_ to \_\_\_\_, inclusive, at the redemption price of 100% of the principal amount of Bonds to be redeemed, plus accrued interest to the date fixed for redemption, in the principal amounts and as set forth in the Ordinance.

Any redemption of this bond under the preceding paragraph(s) shall be made as provided in the Ordinance, upon not less than thirty (30) days' notice, by mailing a copy of the redemption notice by first-class United States mail, postage prepaid, or by another method of giving notice which is acceptable to the Paying Agent and customarily used by fiduciaries for similar notices at the time such notice is given, to each registered owner of the Bonds to be redeemed. Such notice shall be mailed to the address of such registered owner appearing on the registration books of the Paying Agent, unless such notice is waived by the registered owner of the Bonds to be redeemed; *provided, however*, that failure to give notice of redemption by

mailing or any defect in the notice as mailed or in the mailings thereof to the registered owner of any Bond to be redeemed shall not affect the validity of the redemption as to other Bonds for which proper notice shall have been given or waived. In the event that less than the full principal amount hereof shall have been called for redemption, the registered owner hereof shall surrender this bond in exchange for one or more new Bonds in an aggregate principal amount equal to the unredeemed portion of the principal amount hereof. The Paying Agent shall also give further notice of such redemption as provided in the Ordinance, but no failure to do so or defect therein shall affect the validity of the redemption.

So long as DTC or its nominee, CEDE & Co., is registered owner hereof, if all or fewer than all Bonds of a maturity are to be redeemed, the Paying Agent shall notify DTC within the time periods required by the Representation Letter. It is expected that DTC will, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the beneficial owners. Any failure on the part of DTC or a Participant, or failure on the part of a nominee of a beneficial owner of a Bond (having been mailed notice from the Paying Agent, a Participant or otherwise) to notify the beneficial owner of the Bond so affected, shall not affect the validity of the redemption of such Bond. If fewer than all Bonds of a maturity are to be redeemed, DTC shall determine by lot the principal of the maturity of the Bonds to be redeemed of each DTC Participant's interest in such maturity to be redeemed.

If at the time of the mailing of any notice of optional redemption the Township shall not have deposited with the Paying Agent moneys sufficient to redeem all the Bonds called for redemption, such notice shall state that it is conditional, that is, subject to the deposit or transfer of the redemption moneys with the Paying Agent not later than the opening of business on the redemption date, and that such notice shall be of no effect unless such moneys are so deposited.

The Township has established a sinking fund with the Paying Agent, as the sinking fund depository, into which funds for the payment of the principal or redemption price of, and the interest on, the Bonds shall be deposited not later than the date fixed for disbursement thereof. The Township has covenanted in the Ordinance to make payments out of such sinking fund or out of any other of its revenues or funds, at such times and in such annual amounts, as shall be sufficient for prompt and full payment of the principal or redemption price of, and interest on, this bond.

The Township, pursuant to recommendations promulgated by the Committee on Uniform Security Identification Procedures (CUSIP), has caused CUSIP numbers to be printed on the Bonds. No representation is made as to the accuracy of aid numbers either as printed on the Bonds or as contained in any notice of redemption, and the Township shall have no liability of any sort with respect thereto. Reliance upon any redemption notices with respect to the Bonds may be placed only on the identification numbers printed hereon.

No recourse shall be had for the payment of the principal or redemption price of, or interest on, this bond, or for any claim based hereon or on the Ordinance, against any member, officer or employee, past, present, or future, of the Township or of any successor body, either directly or through the Township or any such successor body, under any constitutional provision, statute or rule of law, or by the enforcement of any assessment or by any legal or equitable

proceeding or otherwise, and all such liability of such members, officers or employees is released as a condition of and as consideration for the execution and issuance of this bond.

This bond is registered as to both principal and interest on the bond register to be kept for that purpose at the corporate trust and/or payment office of the Paying Agent, and both principal and interest shall be payable only to the registered owner hereof. This bond may be transferred or exchanged in accordance with the provisions of the Ordinance, and no transfer or exchange hereof shall be valid unless made at said office by the registered owner in person or his duly appointed attorney or other legal representative and noted hereon. The Paying Agent is not required to transfer or exchange any Bond during the fifteen (15) days immediately preceding the date of mailing of any notice of redemption or at any time following the mailing of any such notice, if the Bond to be transferred or exchanged has been called for such redemption. The Township and the Paying Agent may deem and treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest hereon and for all other purposes, whether or not this bond shall be overdue. The Township and the Paying Agent shall not be affected by any notice to the contrary.

This bond shall not be valid or become obligatory for any purpose until the Paying Agent's Authentication Certificate printed hereon is duly executed.

IN WITNESS WHEREOF, the Township of Cheltenham has caused this bond to be signed in its name by the manual or facsimile signature of the President of its Governing Body and its corporate seal or a facsimile thereof to be affixed, imprinted, lithographed or reproduced hereon and attested by the manual or facsimile signature of its Secretary, all as of the Series Issuance Date specified above.

[SEAL]

TOWNSHIP OF CHELTENHAM

By: \_\_\_\_\_ (Facsimile)  
President

Attest

\_\_\_\_\_  
(Facsimile)  
(Insert appropriate title)

FORM OF PAYING AGENT'S AUTHENTICATION CERTIFICATE

This bond is one of the Bonds described therein. Printed on the reverse hereof [Attached hereto] is the complete text of the opinion of Dilworth Paxson LLP, Bond Counsel, dated the date of the initial delivery of, and payment for, the Bonds, a signed copy of which is on file with the undersigned.

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., PAYING  
AGENT

By: \_\_\_\_\_  
Authorized Signer

AUTHENTICATION DATE:

## ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though the terms which they represent were written out in full according to applicable laws or regulations.

TEN COM - as tenants in common  
TEN ENT - as tenants by the entireties  
JT TEN - as joint tenants with the right of  
survivorship and not as tenants in common  
UNIFORM GIFT MIN ACT .....Custodian.....  
(Cust) (Minor)  
under Uniform Gifts to Minors  
Act.....  
(State)

Additional abbreviations may also be used though not in the above list.

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers  
unto \_\_\_\_\_

(Please type or print name, address

\_\_\_\_\_  
(including postal zip code) and social security or other tax

\_\_\_\_\_  
identification number of the transferee)

the within Bond and all rights thereunder, hereby irrevocably appointing  
\_\_\_\_\_ his/her attorney to transfer said Bond on the bond  
register with full power of substitution in the premises.

Dated:

Signature Guaranteed by:

\_\_\_\_\_  
NOTICE: signature(s) must be guaranteed by  
an eligible guarantor institution, an institution  
which is a participant in a Securities Transfer  
Association recognized signature guaranteed  
program.

\_\_\_\_\_  
NOTICE: The signature to this assignment  
must correspond with the name as it appears  
upon the face of the within [Note] [Bond] in  
every particular, without alteration or  
enlargement or any change whatever

\_\_\_\_\_  
(Authorized Signature)

EXHIBIT B  
To Ordinance of  
Township of Cheltenham  
Montgomery County, Pennsylvania  
Enacted May 21, 2014

Maturity Schedule

<u>Year</u>	<u>Maximum Principal Amount</u>	<u>Interest Rate</u>
2015	\$ 490,000	6.000%
2016	485,000	6.000
2017	700,000	6.000
2018	860,000	6.000
2019	880,000	6.000
2020	890,000	6.000
2021	370,000	6.000
2022	380,000	6.000
2023	825,000	6.000
2024	600,000	6.000
2025	245,000	6.000
2026	260,000	6.000
2027	260,000	6.000
2028	265,000	6.000
2029	235,000	6.000
2030	245,000	6.000
2031	260,000	6.000
2032	260,000	6.000
2033	255,000	6.000
2034	3,800,000	6.000

EXHIBIT C  
To Ordinance of  
Township of Cheltenham  
Montgomery County, Pennsylvania  
Enacted May 21, 2014

Maximum Annual Amounts Appropriated to Sinking Funds

<u>Year</u>	<u>Amount</u>
2015	\$1,212,488
2016	1,209,500
2017	1,395,400
2018	1,513,400
2019	1,481,800
2020	1,439,000
2021	865,600
2022	853,400
2023	1,275,600
2024	1,001,100
2025	610,100
2026	610,400
2027	594,800
2028	584,200
2029	538,300
2030	534,200
2031	534,500
2032	518,900
2033	498,300
2034	4,028,300

EXHIBIT D  
To Ordinance of  
Township of Cheltenham  
Montgomery County, Pennsylvania  
Enacted May 21, 2014

NOTICE OF FULL REDEMPTION

To the Registered Owners of  
Township of Cheltenham  
(Montgomery County, Pennsylvania)  
General Obligation Bonds, Series of \_\_\_\_\_

[IN OUTLINE FORM IDENTIFY BONDS TO BE REDEEMED, LISTING MATURITY DATES, TOTAL AMOUNT CALLED FOR EACH MATURITY, INTEREST RATES, DATED DATE AND CUSIP NUMBERS]

NOTICE IS HEREBY GIVEN that the Township of Cheltenham, Montgomery County, Pennsylvania (the "Township"), pursuant to the terms of the above captioned Series of Bonds (herein, the "Refunded Bonds") hereby calls for redemption and payment in full on \_\_\_\_\_ (the "Redemption Date"), all of the outstanding principal amount of the Refunded Bonds listed above at a redemption price equal to 100% of the principal amount thereof, plus accrued interest to the Redemption Date (the "Redemption Price"). The Refunded Bonds so called for redemption will become due and payable at the office of The Bank of New York Mellon Trust Company, N.A. (the "Paying Agent") on the Redemption Date set forth above, as follows:

*If by Mail:*

*If by Courier:*

[Insert street address, city, state, and zip code]

Interest on the Refunded Bonds designated for redemption will cease to accrue on the Redemption Date specified above.

The Refunded Bonds so called for redemption must be surrendered to the Paying Agent (at the address listed in the preceding paragraph) for payment on the Redemption Date with all coupons, if any, maturing subsequent to the Redemption Date.

This Notice, however, is expressly conditioned upon receipt by the Paying Agent of the full Redemption Price on or before the opening of business on the Redemption Date and shall be of no force or effect unless such moneys are so received.

Payments or redemption which are due to occur on any day which is a Saturday, Sunday or other day on which banks in the Commonwealth of Pennsylvania are authorized to be closed, shall occur on the next banking business day with the same force and effect as if occurring on the originally scheduled day.

**IMPORTANT NOTICE**

Withholding of 28% of gross redemption proceeds of any payment made within the United States of America may be required by the Jobs and Growth Tax Relief Reconciliation Act of 2003, unless the Paying Agent has the correct taxpayer identification number (social security or employer identification number) or exemption certificate of the Payee. Please furnish a properly completed form W-9 or exemption certificate or equivalent when presenting your securities.

*No representation is made as to the correctness or accuracy of the CUSIP numbers listed in this Notice or printed on the Refunded Bonds to be redeemed.*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[NAME OF ISSUER]

By: THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as agent for the  
above redemption



## Article XXXIV

### M4 – HISTORIC PRESERVATION, CULTURAL AND ARTISTIC USE, AND OTHER MULTIPLE USES DISTRICT

#### §295 - \_\_\_\_\_ Purpose.

The purpose of the M4 Zoning District is to promote and provide for the adaptive re-use of buildings that are historic resources and of properties with significant character, uses and development patterns that might otherwise be obsolete and be likely to deteriorate or be demolished due to obsolescence; to preserve and promote the use of such historic resources and other land and buildings for cultural and artistic purposes; and to provide for such development in a manner that integrates new development and adaptive re-use into an existing community, transitions between lower and higher density uses, and accomplishes such goals by allowing a mix of compatible uses that provide for community-benefitting services as well as a variety of living opportunities.

#### §295 - \_\_\_\_\_ Applicable Regulations.

In the M4 Historic Preservation, Cultural and Artistic Use, and Other Multiple Uses District the regulations contained in this Article shall apply. Article XXIV Preservation Overlay District of this Zoning Ordinance shall not apply in the M4 District.

#### §295-\_\_\_\_\_ Use Regulations

A building may be erected, altered or used, and a lot or premises may be used, for the following purposes and no others and more than one of the uses described below is permitted on the same lot or within the same building provided that compliance with both of the following Paragraphs A and B occurs for any development under this Article, regardless of whether development of Multiple Dwellings under Paragraph C is proposed or exists:

- A. All of the lot(s) under common ownership which contain Historic Resources (as defined in Section 295-\_\_\_\_\_ provided, however, for purposes of this Zoning District, the term “Historic Resources” shall refer only to those Historic Resources that are buildings or portions of buildings constructed before 1910) shall be subjected to a deed restriction at the time of recording of the land development plan for development of the lot according to this Article, with terms written to the satisfaction of the Township Solicitor, recorded against the lot(s) stating that the pre-1910 facades, rooflines, and interiors of the Historic Resource(s) shall be preserved in perpetuity in their current or better state of repair, including but not limited to pre-1910 facades, rooflines and interiors, as further defined below, except as otherwise provided in this Article; or if there are more than two (2) Historic Resources on the lot(s) then designating which two (2) or more will be preserved pursuant to Section C.1a. below. For the purposes of

this Article, the terms “interior” and “interiors” shall mean only the entrance halls, lobbies, and foyers on the first, main floors of the Historic Resources, as well as the staircases accessing such areas.

- B. The use of lot(s) in the M4 District shall include, at a minimum, two (2) of the following uses and those uses shall occupy, when aggregated, at least three thousand (3,000) square feet of floor space dedicated exclusively to: classroom(s), lecture hall(s), auditorium, studio(s), and/or performance and exhibition space for dance, art, music, photography and other arts and media, for educational, cultural, artistic and community purposes.
- C. 1. Multiple Dwellings are permitted in the M4 District subject to a maximum density of eight (8) dwelling units for each one (1) acre of Developable Acreage but in the aggregate no more than two hundred fifty (250) units of Multiple Dwellings per tract held in common ownership at the date of establishment of the M4 District, subject further to subsections 1.a., 1.b., 1.c. and D.4. below:
- a. In order to facilitate the historic preservation, cultural and artistic use, and other multiple use purpose of this M4 District the following shall apply:
- (i) Multiple Dwellings are permitted only as part of a common land development plan of contiguous land in the M4 District submitted in the form of a master plan (see Sections \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ below) meeting the requirements of Paragraphs A and B above and the other requirements of this Article, which includes (by depiction in the master plan) proposed development of non-Multiple Dwelling uses as permitted in the M4 District as well as all Multiple Dwelling uses intended to be developed on the tract held in common ownership at the date of establishment of the M4 District;
- (ii) Multiple Dwellings shall be approved only as part of a common land development plan of contiguous land which also includes preservation of at least two buildings that are Historic Resources which shall be the two largest and/or most historically significant buildings that are Historic Resources if there are more than two within the area of contiguous land that is part of the common land development plan, or the preservation of only one (1) building which is an Historic Resource if the tract only contains one (1) building; and
- (iii) the calculated density of Multiple Dwellings per one (1) acre of Developable Acreage shall not be reduced by the presence of non-residential buildings or uses (including but not limited to

hotels) within the same lot, though the lot shall be required to comply with the minimum lot area, Building Coverage and Impervious Coverage limitations applicable in the M4 District, provided, however, that for each two (2) bedrooms in a hotel or apartment hotel the Multiple Dwelling density calculation shall be reduced by one (1) unit.

b. Preservation of an Historic Resource within the meaning of this Article shall be deemed to have occurred even if any of the following circumstances exist or are proposed: (a) any portion of the Historic Resource is, or is proposed to be, demolished which was added after 1910; (b) the building that is an Historic Resource is demolished after at least seventy-five percent (75%) of the Historic Resource is lost due to, or is duly ordered to be demolished following, a fire or other casualty loss; (c) the building that is an Historic Resource can reasonably be demonstrated to be substantially deteriorated or structurally compromised at the date of adoption of the ordinance applying the M4 Zoning District to the Historic Resource to such a degree that it would create an unreasonable financial hardship to restore the building, in which case the building may either be demolished or restored to economic usefulness without preservation of its historic features, provided that this exception shall not apply to the building (or two if there are two or more) which caused the designation as an Historic Resource; (d) in order to allow for building additions and adaptation to modern uses and needs no more than two facades that are most architecturally significant and prominently visible from a public street, and including the same façade from which the public view is to be protected pursuant to Section 295-\_\_\_\_\_ below, must retain their/its historical architectural appearance; or (e) additions or alterations may be made even to protected facades in order to accommodate modern uses and the needs of owners and guests such as, but not limited to, doors and awnings, lights and signs (the latter two subject to all lighting and sign requirements of the Zoning Ordinance and the Subdivision and Land Development Ordinance) so long as such addition or alterations are historically relevant and impact the historic features as minimally as reasonably feasible.

c. In buildings which contain or are attached to Multiple Dwellings, or on the same lot as Multiple Dwellings, the following shall, as examples and not for limitation, be considered permitted "accessory uses": commissary, beauty parlor, barbershop, indoor pet care facilities, flower shop, restaurant, and tailor shop.

d. "Common ownership" shall mean ownership by the same persons or entities, or directly or indirectly by persons or entities which are affiliates of one another and/or under common control by legal structure or by agreement, and all successors and assigns thereof or purchasers or

transferees therefrom, by agreement or operation of law. Ownership of percentage interests in an entity that do not constitute control of that entity shall not alone constitute common ownership, but ownership of a controlling equity interest, or contractual management control, in a controlling entity such as the general partner of a limited partnership, or contractual control by an individual or by minority interests having management authority under the organizational documents of an entity such as the operating agreement of a limited liability company, or common control under any other contractual relationship such as a management contract, shall be common ownership. "Ownership" shall include leasehold interests and shall include the right to ownership under an agreement of sale or option agreement.

- D. The following uses in a single building (whether or not a separate building with only that use or uses), more than one in a building, or in multiple buildings, including in hotels and apartment hotels as set forth in Section D.4. below, or not in a building, are permitted:
1. Restaurant, tea room, bar, tavern; brewery or distillery when associated with operation of a restaurant, bar or tavern.
  2. Health and wellness clinic which incorporates elements such as: outpatient medical or chiropractic treatment or therapy, exercise and physical rehabilitation, outpatient diagnostic or health screening procedures and testing, dietary consultation, and preventive medicine services, not including drug dispensary.
  3. Fitness center which incorporates a gym or similar exercise facility and which may also include, among other facilities, a swimming pool, spa, and offices or other rooms for providing fitness, dietary and wellness treatments or consultation.
  4. Apartment hotel lodging up to eighteen (18) units per acre or hotel lodging up to thirty-two (32) units per acre but in no event more than 250 units in the aggregate per tract, defined as all contiguous lots in common ownership at the date this District is established. In a building containing or attached to an apartment hotel or hotel, or on the same lot, the following shall be permitted "accessory uses": conference center, event hall (including wedding receptions and similar events), restaurant, bar, tea room, tavern, retail goods store, studio, personal service shop, bank, financial institution, commissary, beauty parlor, barbershop, indoor pet care facilities, flower shop and tailor shop. The total number of Multiple Dwellings, hotel rooms and apartment hotel bedrooms, on the tract described in this paragraph, shall be a maximum of five hundred (500) less the number of Multiple Dwelling Units resulting from the calculation under C.1.a. (iii) above.

5. Classrooms, lecture halls, auditoriums, studios, performance and exhibition spaces for dance, art, music, photography, and other arts and media, for educational, exhibition, conference or performance purposes.
  6. Bakery, confectionery or custom shop for the production of articles to be sold at retail on the premises.
  7. Offices related to or serving any other permitted use in this District.
  8. Public gardens for exhibition or community gardening use; or farmer's market defined as the seasonal selling or offering for sale at retail of vegetables or produce, flowers, home-produced or studio-produced arts and crafts, orchard products, and similar non-animal agricultural products, occurring in a predesignated area, where the vendors are individuals who have raised the vegetables or produce or have taken the same on consignment for retail sale and subject to any further regulations or ordinances adopted by the Township Board of Commissioners regulating what may be sold, hours and days of operation, responsibilities for cleanup, and zones for farmer's markets could be located in relation to residential uses.
  9. Amphitheater, located not closer than two hundred (200) feet to any residential use, when authorized by a special exception.
  10. In addition to any other accessory use expressly permitted in this District, any accessory use on the same lot with and customarily incidental to any of the above permitted uses.
  11. Any use of the same general character as any of the uses hereinbefore specifically permitted when authorized as a special exception but not to include any use permitted only in a less restricted district.
- E. The following shall be allowed in connection with preservation of Historic Resources: 1. the interior of each building which is an Historic Resource may be reasonably but not substantially altered (cleaning, repair, restoration, upgrading or enhancement of the existing character of the interior of an Historic Resource shall not be considered to be an alteration and shall be permitted); 2. the applicant may make any and all alterations to the Historic Resource required by the Americans With Disabilities Act, the Pennsylvania Fire and Panic Act, the Township Fire Code and all other required fire and public safety codes, statutes, ordinances and regulations; 3. the applicant may modernize HVAC, plumbing, electrical and mechanical equipment as well as all interior alterations reasonably necessary to accomplish same; 4. in each of 1., 2. and/or 3., the applicant shall use all reasonably practicable efforts to preserve the historic character and details of the exterior and interior of the building or buildings which are Historic Resources;

and 5. the applicant shall include a depiction of the resulting historic character and details of the exterior and interior of the building or buildings which are Historic Resources in the master plan referred to in Section \_\_\_\_\_.

§ 295-\_\_\_\_ Lot area and lot width.

A lot area of not less than twenty-five thousand (25,000) square feet and a lot width of not less than one hundred fifty (150) feet at the street line and extending for that width from the street line to the depth of the rear yard shall be provided for every building hereafter erected, altered or used in the M4 District.

§ 295-\_\_\_\_ Building Coverage and Impervious Coverage.

- A. The Building Coverage shall not exceed twenty percent (20%) of the Developable Acreage of the lot.
- B. Impervious Coverage shall not exceed fifty five percent (55%) of the Developable Area of the lot.
- C. Building Coverage and Impervious Coverage in the Multiple Use District may be calculated based on the Developable Acreage of contiguous lots under common ownership, but not if the lot is separated by a public street.

§ 295-\_\_\_\_ Yard regulations.

- A. Front yard.
  - 1. There shall be a front yard, the depth of which shall be at least forty (40) feet, provided that, in the case of a lot extending through from one street to another, the street lines of which are not more than one hundred fifty (150) feet apart, the depth of the front yard on the rear street line may be decreased with approval of the subdivision or land development plan. Vehicular parking shall not be permitted within fifteen (15) feet of any street line.
  - 2. In the case of a corner lot, a front yard as provided for in Subsection A(1) shall be required on each street on which the lot abuts, provided that, in the case of a corner lot held in single and separate ownership at the effective date of this chapter of a width less than one hundred (100) feet, the depth of the front yard on the long side may be decreased with approval of the subdivision or land development plan.
- B. Side yards. There shall be two side yards, one on each side of the main building, each at least fifteen (15) feet wide.
- C. Rear yard. There shall be a rear yard, the depth of which shall be at least forty (40) feet.

- D. Lots greater than ten (10) acres in area shall be exempt from the requirements of subsections A., B. and C. of this Section but shall be required to maintain a setback distance of fifty (50) feet between any building on such lot and the ultimate right-of-way line of any public street and between any building on such lot and the boundary of an adjoining lot.

§ 295-\_\_\_\_ Green area.

A green area, completely landscaped, shall be required. This area shall be not less than twenty five percent (25%) of the lot area and shall include a landscaped buffer strip at least ten (10) feet wide abutting the entire perimeter of the lot, excluding driveways for ingress. Green area may be calculated based on the area of contiguous lots under common ownership within the M4 District, or a common development plan under common ownership within the M4 District at the time of application under the subdivision and land development process, excluding areas and lots separated by a public street. The landscaped buffer requirement in perimeter locations may be deemed to be satisfied by existing conditions where the distance between a proposed building and the applicable perimeter is more than one hundred fifty (150) linear feet or if the purpose of a buffer is effectively accomplished by existing trees or other existing landscaping.

§ 295-\_\_\_\_ Building height.

A building located within one hundred (100) feet of any street line may not exceed three (3) stories and thirty six (36) feet in height and a building located more than one hundred feet (100) feet from any street line may not exceed four (4) stories and forty-eight (48) feet in height; except that portions of additions to buildings that are a Historic Resource having an aggregate building footprint up to one hundred fifty percent (150%) of the building footprint of the Historic Resource (at the date of establishment of the M4 District including any portion of the building constructed after 1910) to which the addition is attached may exceed the height and story restrictions of this Section and may extend up to the same building height as the Historic Resource though no more than two (2) additions of such building height shall be permitted on each Historic Resource, and in no event may any portion of such addition be within eighty (80) feet of any street line.

§ 295-\_\_\_\_ Parking.

The following off-street parking requirements shall apply in the M4 District:

- A. There shall be two (2) off-street parking spaces provided for every residential dwelling unit.
- B. There shall be one (1) off-street parking space provided for every rental unit for hotels, apartment hotels and motels.
- C. There shall be one (1) off-street parking space provided for every two hundred fifty (250) square feet of gross floor area of uses in §295-\_\_\_\_D.4.-12. (except

hotels, apartment hotels or motels for which §295-\_\_\_\_ B. is applicable), including, but not limited to, accessory uses.

- D. There shall be one (1) off-street parking space provided for every three hundred (300) square feet of gross floor area of all other uses permitted in the M4 District not enumerated above.
- E. At least thirty percent (30%) of the off-street parking spaces shall be underground parking.
- F. There shall be no parking garages with parking spaces above the ground level unless 1. all exterior garage walls are at least one hundred fifty (150) feet from all public streets and 2. all exterior façades directly visible from a public street and not shielded from view by other buildings are designed and constructed to appear generally consistent with the character and aesthetics of the Historic Resources.
- G. No parking on perimeter streets surrounding the tract shall count toward the required parking.

§ 295-\_\_\_\_ View shed.

No buildings or additions to buildings shall be erected, or new landscaping shall be installed, such that the view from a public street to the primary façade of an Historic Resource is materially impaired; provided that if that primary façade can be viewed directly from more than one street or if there is more than one façade that is primary, then this restriction shall apply only to the view from one street to one façade which is determined by the Board of Commissioners to be the primary façade.

§295-\_\_\_\_ Traffic Impact

A traffic impact study shall be required for any hotel, apartment hotel, event facility, conversion of a Historic Resource for any use permitted in the M4 District or for Multiple Dwellings in order to determine the impact of the proposed use and offer solutions to mitigate the potential negative impacts, if any, of the proposed use or uses. The traffic impact study shall be prepared by a qualified traffic engineer who possesses the credentials outlined for a Municipal Traffic Engineer as defined in Pennsylvania Code Chapter 612, as amended from time to time, entitled "A Municipal Traffic Engineering Certification". The applicant shall pay all costs associated with preparation and submission of the study.

A. The study must demonstrate that the proposed use will not adversely affect the surrounding areas or traffic circulation generally in the Township; or else identify any traffic problems that might be caused or aggravated by the proposed use or uses and delineate solutions to those problems. Based upon the findings of the study the Township may require other improvements both onsite and offsite, which would alleviate hazardous or congested situations directly attributable to the proposed development.

B. The traffic impact study shall include an analysis of all significant intersections within the study area extending to a minimum of one-half mile from the boundary on all roads which the traffic generated by the proposed development would be reasonably expected to utilize. Intersections greater than one-half mile away shall also be studied if deemed necessary by the Township Engineer. The traffic study shall also include an analysis of existing and proposed sidewalks and pedestrian trails.

§ 295-\_\_\_ Additional Procedures

See Article IX of the Cheltenham Township Subdivision and Land Development Ordinance.



Article IX

ADDITIONAL PROCEDURES FOR DEVELOPMENT ACTIVITY IN THE M4 – HISTORIC PRESERVATION, CULTURAL AND ARTISTIC USE, AND OTHER MULTIPLE USES DISTRICT

§ 260-\_\_\_ Additional Procedures For Development Activity in the M4 Zoning District

A. Prior to any construction or demolition in the M4 District, in addition to the standard subdivision and land development submissions, the developer of such proposed construction/demolition shall submit to the Township Building and Zoning Department and to the Board of Commissioners a master plan of the development under the provisions of this Chapter and Article XXXIV of the Zoning Ordinance, setting forth in reasonable detail (1) the construction/demolition planned on the tract proposed to be developed, (2) the common development scheme of the lot, (3) the quantity and type of all proposed buildings, structures and uses proposed, including Multiple Dwelling units, and non-Multiple Dwelling uses, the proposed locations of buildings and/or structures, the historic character and details of the Historic Resource(s) preserved/to be preserved as set forth in Article XXXIV of the Zoning Ordinance, the heights, elevations and architectural style, proposed driveways, parking areas and ingress and egress for the entire tract and each building to be preserved, sufficient to demonstrate, among other things, whether the provisions of Article XXXIV of the Zoning Ordinance are satisfied.

B. The subdivision and/or land development plan for the lot shall conform to the master plan submitted pursuant to A. above. The developer shall submit a revised master plan if any changes are proposed to the submitted master plan which shall be reviewed by the Township Building and Zoning Department for compliance with the provisions of Article XXXIV of the Zoning Ordinance. The Township Planning Commission, Shade Tree Advisory Commission and any other Township advisory committee given the right to comment on the subdivision land/or development plan by the Board of Commissioners, shall also receive for review the master plan and revised master plans.

C. A revised master plan shall be submitted to the Board of Commissioners at the same time that a revised subdivision and/or land development plan is submitted that does not conform to a previously approved master plan. The developer shall coordinate any changes to a previously approved master plan with any subsequent subdivision and/or land development plans.

D. The Board of Commissioners shall render a decision approving or denying approval of the master plan or revised master plan within ninety (90) days after the date of its first regular meeting after the date the master plan or revised master plan is submitted, unless an extension is granted by the developer.